95th Cong.

[COMMITTEE PRINT]

Committee Print

A COMPILATION OF

Federal Laws

RELATING TO

Conservation and Development of Our Nation's Fish and Wildlife Resources, Environmental Quality, and Oceanography

January 1977

Serial No. 95–B

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LETTER OF TRANSMITTAL

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 1, 1977.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. MURPHY: In response to a request from Representative Robert L. Leggett, Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, I am pleased to transmit a new revision of the January 1973 Committee Print entitled, *A Compilation of Federal Laws Relating to Conservation and Development of our Nation's Fish and Wildlife Resources, Environmental Quality, and Oceanography.* This revision is primarily the work of Mr. Walter S. Albano of the American Law Division who updated the publication through December 31, 1976, rearranged and expanded the prior edition. The 1973 edition was the work of Mr. George Costello (American Law Division); Mr. H. Steve Hughes (Environmental Policy Division); and Ms. Marjorie Browne (Foreign Affairs Division). The 1973 edition was carried out under the direction of Mr. Joseph E. Ross, Chief of the American Law Division and Mr. Wallace D. Bowman, Chief of the Environmental Policy Division. This edition was carried out under the direction of Mr. Joseph E. Ross, Chief of the American Law Division.

I trust that this current edition of the compilation will prove to be as useful for your committee as the prior editions.

Sincerely yours,

GILBERT GUDE, *Director.*

LETTER OF SUBMITTAL

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C., February 8, 1977.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During past Congresses, the Library of Congress prepared for the use of the Committee, a compilation of public laws relating to conservation, oceanography and environmental quality. That compilation proved to be a most useful document and was in great demand as a reference source for many people in public and private life, as well as for the Committee.

At our request, Mr. Walter S. Albano of the American Law Division, Library of Congress, has prepared an updated version of this compilation, incorporating all laws enacted through the 94th Congress. The material is assembled and edited for printing by the Committee editor, Donald A. Watt.

I attach a copy of the last printing of this document as a sample and strongly recommend this updated version be printed as a Committee Print. The Hon. John B. Breaux, Chairman of the Subcommittee on Oceanography, joins me in this recommendation. I am confident this document will again prove to be of great value and will save countless hours of research effort better spent elsewhere.

Sincerely,

ROBERT L. LEGGETT,
Chairman, Subcommittee on Fisheries and Wildlife
Conservation and the Environment.

FOREWORD

In the last few years, a broadening public interest has developed in this Nation and the world in the preservation and enhancement of the physical environment. During the last two years the "energy crisis" has greatly increased the awareness of energy conservation. These concerns and the awareness thereof have been reflected in a recent outpouring of books, magazines, and newspaper articles, television specials and other pronouncements through the mass media which have raised serious questions about the way our modern technological society has impacted on our land, air, and water resources. The record volume of legislation which has been enacted in the last decade to deal with numerous environmental problems is an indication of the strong Congressional response in this important legislative area. Beginning with the 92nd Congress, numerous statutes were enacted to conserve and expand our Nation's resources in the fields of energy and the preservation of our environment.

The Committee on Merchant Marine and Fisheries has a long history of direct involvement in environmental and conservation legislation. Increasing committee activities during the last few years has made clear the need for a comprehensive compilation of both early and recently enacted legislation. The Congressional Research Service has compiled the significant laws related to fish and wildlife, oceanography, and environmental quality. The energy conservation laws were added to this edition. These areas were chosen because of their impact on the total quality of our environment and because they represent areas of interest and concern to the Committee.

This compilation was not prepared simply as a chronological collection of enactments. It attempts to provide the reader with all of the major laws presently in force in these areas.

This revision has been rearranged to present the material under fourteen titles as follows: Title I, *Air Pollution;* Title II, *Environment, Generally;* Title III, *Executive Orders;* Title IV, *Fish and Wildlife Conservation* (provisions relating to both fish and wildlife); Title V, *Fish Resources, Preservation* (provisions relating to fish and fisheries only); Title VI *Fishermen;* Title VII, *Fishing Vessels;* Title VIII, *Oceanography;* Title IX, *Pollution Control-Financing;* Title X, *Radiation Hazards;* Title XI, *Water Pollution;* Title XII, *Water Resources;* Title XIII, *Wildlife Preservation* (provisions relating to wildlife only); and Title XIV, *Interstate Compacts.*

Provisions which logically could be placed under several titles are cross-referenced to the title under which the text of the provisions appear in order to avoid duplication. All related laws which have been codified in the United States Code have been extracted and placed under various subject headings within citations corresponding to the 1970 edition of the Code and Supplements of the edition.

For the convenience of the reader, the table of contents has been broken into three groupings: (1) popular name, (2) a statutory reference guide as to title and section of the United States Code, and (3) general index by subject for each title.

The user is also advised to consult both the 1970 edition of the United States Code and the available Supplements for detailed research purposes since many minor editorial deletions have been made in preparing this compilation to facilitate continuity, brevity, and clarity.

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Popular Names

STATUTORY REFERENCES

General Title

TITLE I—AIR POLLUTION

1. Administration of the Clean Air Act With Respect to Federal Contracts, Grants, or Loans

Ex. Order 11602; Ex. Order 11738

(See Ex. Order 11602 and Ex. Order 11738 under title IV *Executive Orders*)

2. Air Pollution—Administration of Clean Air Act, etc.

Ex. Order 11738, 38 F.R. 25161

(See Ex. Order 11738 under title III *Executive Orders*)

3. Air Pollution, General Provisions

42 U.S.C. 1857g–1857l

§ 1857g. Administration.

(a) Regulations; delegation of powers of Administrator.

The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

(b) Detail of Environmental Protection Agency personnel to air pollution control agencies.

Upon the request of an air pollution control agency personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(c) Payments under grants: installments; advances or reimbursement.

Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator. (July 14, 1955, ch. 360, title III, § 301, formerly § 8, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91–604, §§ 3(b)(2), 15(c)(2), 84 Stat. 1677, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (b). Pub. L. 91–604, § 3(b)(2), substituted "Environmental Protection Agency" for "Public Health Service" and struck out provisions covering the payment of salaries and allowances.

Subsec. (c). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

1967—Pub. L. 90–148 reenacted section without change.

§ 1857h. Definitions.

When used in this chapter—

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term "air pollutant" means an air pollution agent or combination of such agents.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being. (July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91–604, § 15(a)(1), (c)(1), 84 Stat. 1710, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(1), substituted a definition of "Administrator" as meaning the Administrator of the Environmental Protection Agency for a definition of "Secretary" as meaning the Secretary of Health, Education, and Welfare.

Subsec. (g). Pub. L. 91–604, § 15(a)(1), added subsec. (g) defining "air pollutant". Former subsec. (g) redesignated as subsec. (h) and amended.

Subsec. (h). Pub. L. 91–604, § 15(a)(1), redesignated subsec. (g) as subsec. (h) and, in subsec. (h) as so redesignated, substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90–148 reenacted section without change.

§ 1857h–1. Emergency powers.

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. (July 14, 1955, ch. 360, title III, § 303, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705.)

§ 1857h–2. Citizen suits.

(a) Establishment of right to bring suit.

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

(b) Notice.

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a)(2) of the section prior

to 60 days after the plaintiff has given notice of such action to the Administrator.

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 1857c–7(c)(1)(B) of this title or an order issued by the Administrator pursuant to section 1857c–3(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator.

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Award of costs; security.

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Non-restriction of other rights.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Definition.

For purposes of this section, the term "emission standard or limitation under this chapter" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard, or

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive,

which is in effect under this chapter (including a requirement applicable by reason of section 1857f of this title or under an applicable implementation plan. (July 14, 1955, ch. 360, title II, § 304, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1706.)

§ 1857h–3. Legal representation of Administrator and appearance by Attorney General.

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action within a reasonable time, attorneys appointed by the Administrator shall appear and represent him. (July 14, 1955, ch. 360, title III, § 305, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1707.)

§ 1857h–4. Federal procurement.

(a) Contracts with violators prohibited.

No Federal agency may enter into any contract with any person who is convicted of any offense under section 1857c–8(c)(1) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected.

(b) Notification procedures.

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Federal agency contracts.

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress.

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) Annual report to Congress.

The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. (July 14, 1955, ch. 360, title III, § 306, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1707.)

§ 1857h–5. Administrative proceedings and judicial review.

(a)(1)[1] In connection with any determination under section 1857c–5(f) or section 1857f–1(b)(5) of this title, or for purposes of obtaining information under section 1857f–1(b)(4) or 1857f–6c(c)(3) of this title, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or

[1] So in original. Subsec. (a) was enacted without a par. (2).

secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 1857f–1(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b)(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard under section 1857c–7 of this title, any standard of performance under section 1857c–6 of this title, any standard under section 1857f–1 of this title (other than a standard required to be prescribed under section 1857f–1(b)(1) of this title), any determination under section 1857f–1(b)(5) of this title, any control or prohibition under section 1857f–6c of this title or any standard under section 1857f–9 of this title may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 1857c–5 of this title or section 1857c–6(d) of this title, may be filed only in the United States Court of Appeals for the appropriate circuit. Any such petition shall be filed within 30 days from the date of such promulgation or approval, or after such date if such petition is based solely on grounds arising after such 30th day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence. (July 14, 1955, ch. 360, title III, § 307, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1707.)

(As amended Nov. 18, 1971, Pub. L. 92–157, title III, § 302(a), 85 Stat. 464.)

AMENDMENTS

1971—Subsec. (a)(1). Pub. L. 92–157 substituted reference to section "1857f–6c(c)(3)" for "1857f–6c(c)(4)" of this title.

§ 1857h–6. Mandatory licensing.

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 1857c–6, 1857c–7, or 1857f–1 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found. (July 14, 1955, ch. 360, title III, § 308, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1708.)

§ 1857h–7. Policy review.

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish

his determination and the matter shall be referred to the Council on Environmental Quality. (July 14, 1955, ch. 360, title III, § 309, as added Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1709.)

§ 1857i. Application to other laws; nonduplication of appropriations.

(a) Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) No appropriation shall be authorized or made under section 241, 243, or 246 of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter. (July 14, 1955, ch. 360, title III, § 310, formerly § 10, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, renumbered § 303, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505; renumbered § 310, and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(a), 84 Stat. 1705, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

1967—Subsec. (b). Pub. L. 90–148 substituted reference to section 246 of this title for reference to section 246(c) of this title.

§ 1857j. Records and audit.

(a) Each recipient of assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter. (July 14, 1955, ch. 360, title III, § 311, formerly § 11, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, renumbered § 304, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505, renumbered § 311, and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(a), 84 Stat. 1705, 1713.)

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" and "Secretary of Health, Education, and Welfare".

1967—Pub. L. 90–148 reenacted section without change

§ 1857j–1. Comprehensive economic cost studies.

(a) In order to provide the basis for evaluating programs authorized by this chapter and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Administrator, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this chapter; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standard of air quality as may be established pursuant to this chapter or applicable State law. The Administrator shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

(b) The Administrator shall also make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs assisted pursuant to this chapter and other programs for the same purpose as this chapter; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969. (July 14, 1955, ch. 360, title III, § 312, formerly § 305, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505, renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713.)

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

§ 1857j–2. Additional reports to Congress.

Not later than six months after November 21, 1967, and not later than January 10 of each calendar year beginning after such date, the Administrator shall report to the Congress on measures taken toward implementing the purpose and intent of this chapter including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended emission control requirements; (3) the status of enforcement actions taken pursuant to this chapter; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set

or under consideration pursuant to subchapter II of this chapter; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this chapter; and (10) the reports and recommendations made by the President's Air Quality Advisory Board. (July 14, 1955, ch. 360, title III, § 313, formerly § 306, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), (84 Stat. 1705, 1713.)

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

§ 1857j–3. Labor standards.

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40. (July 14, 1955, ch. 360, title III, § 314, formerly § 307, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713.)

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" meaning the Secretary of Health, Education, and Welfare.

§ 1857k. Separability of provisions.

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter shall not be affected thereby. (July 14, 1955, ch. 360, title III, § 315, formerly § 12, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, renumbered § 305, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992, amended and renumbered § 308, Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506, renumbered § 315, Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705.)

AMENDMENTS

1967—Pub. L. 90–148 reenacted section without change.

§ 1857*l*. Appropriations.

There are authorized to be appropriated to carry out this chapter, other than sections 1857b(f)(3) and (d), 1857b–1, 1857f–6e, and 1858a of this title, $125,000,000 for the fiscal year ending June 30, 1971, $225,000,000 for the fiscal year ending June 30, 1972, $300,000,000 for the fiscal year ending June 30, 1973, and $300,000,000 for the fiscal year ending June 30, 1974. (As amended Apr. 9, 1973, Pub. L. 93–15, § 1(c), 87 Stat. 11.)

AMENDMENTS

1973—Pub. L. 93–15 authorized appropriation of $300,000,000 for fiscal year ending June 30, 1974.

1970—Pub. L. 91–604, § 13(b), substituted provisions authorizing appropriations for the fiscal years June 30, 1971, June 30, 1972, and June 30, 1973, for provisions authorizing appropriations of $74,000,000 for fiscal year ending June 30, 1968, $95,000,000 for fiscal year ending June 30, 1969, and $134,000,000 for fiscal year ending June 30, 1970, and added sections 1857b(f)(3), 1857f–6e, and 1858a of this title to the enumeration of excepted sections.

1967—Pub. L. 90–148 inserted provision excepting sections 1857b(d) and 1857b–1 of this title from the sections for which appropriations are authorized, struck out provision authorizing an appropriations of $46,000,000 for the fiscal year ending June 30, 1967, raised from $66,000,000 to $74,000,000 the authorization for appropriation for fiscal year ending June 30, 1968, and from $74,000,000 to $95,000,000 the authorization for appropriation for fiscal year ending June 30, 1969, and added authorization for an appropriation of $134,300,000 for the fiscal year ending June 30, 1970.

1966—Pub. L. 89–675 substituted provisions authorizing appropriations to carry out the chapter of $46,000,000 for the fiscal year ending June 30, 1967, $66,000,000 for the fiscal year ending June 30, 1968, and $74,000,000 for the fiscal year ending June 30 1969 for provisions authorizing appropriations to carry out subchapter I of this chapter for fiscal years ending on June 30, 1965, 1966, and 1967.

1965—Pub. L. 89–272 deleted former subsec. (a), which authorized an appropriation of not to exceed $5,000,000 for the fiscal year ending June 30, 1964 to carry out section 1857c of this title, redesignated former subsec. (b) as the entire section, and substituted "title I" for "this Act", which for purposes of codification has been changed to "subchapter I of this chapter."

4. Air Pollution, Prevention, and Control

42 U.S.C. 1857–1857f

Sec.

§ 1857. Congressional findings; purposes of subchapter.

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

(July 14, 1955, ch. 360, title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 392, amended and renumbered Oct. 20, 1965, Pub. L. 89–272, title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 485.)

Amendments

1967—Subsec. (b)(1). Pub. L. 90–148 inserted "and enhance the quality of" following "to protect".

1965—Subsec. (b). Pub. L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter."

Short Title of 1967 Amendment

Section 1 of Pub. L. 90–148 provided: "That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'."

Short Title

Section 317, formerly section 14, of Act July 14, 1955, as added by section 1 of Pub. L. 88–206, renumbered section 307 by section 101(4) of Pub. L. 89–272, renumbered section 310 by section 2 of Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: "That Act [this chapter] may be cited as the 'Clean Air Act'."

Executive Order No. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663 (See Executive Order No. 10779 under title IV *Executive Orders*).

Prevention, Control, and Abatement at Federal Facilities

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, provides for the prevention, control, and abatement of air pollution at federal facilities (See Executive Order No. 11507 under title IV *Executive Orders*).

National Industrial Pollution Control Council

For provisions relating to the establishment of the National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993 (See Executive Order No. 11523 under title IV *Executive Orders*).

§ 1857a. Cooperative activities.

(a) Interstate cooperation; uniform State laws; State compacts.

The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) Federal cooperation.

The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) Consent of Congress to compacts.

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the estab-

lishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 2, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region. (July 14, 1955, ch. 360, title I, § 102, formerly § 2, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 393, renumbered Oct. 20, 1965, Pub. L. 89–272, title I, § 101(3), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 485; Dec. 31, 1970, Pub. L. 91–604, § 15(c)(2), 84 Stat. 1713.)

AMENDMENTS

1970—Subsecs. (a), (b). Pub. L. 91–604 substituted "Administrator" for "Secretary" wherever appearing therein.

1967—Subsec. (c). Pub. L. 90–148 added declaration that it is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which for purposes of codification was changed to November 21, 1967, the date of approval of such Act, relating to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

§ 1857b. Research, investigations, training, and other activities.

(a) Research and development program for prevention and control of air pollution.

The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.

(b) Availability of information and recommendations; cooperative activities; research grants, etc.; contract; training; fellowships; collection and dissemination of basic data on chemical, physical and biological effects of air quality; process, method and device development.

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 529 of Title 31 and section 5 of Title 41;

(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

(6) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

(c) Results of other scientific studies.

In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollutants.

(d) Construction of facilities.

The Administrator is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this chapter.

(e) Potential air pollution problems; conferences; findings and recommendations of Administrator.

If in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or

discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 1857 of this title, he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 1857d of this title.

(f) Accelerated research program on short- and long-term effects of air pollutants; conduct of studies, utilization of facilities, and consultations; duration of contracts; authorization of appropriations.

(1) In carrying out research pursuant to this chapter, the Administrator shall give special emphasis to research on the short- and long-term effects of air pollutants on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program—

(A) to improve knowledge of the contribution of air pollutants to the occurrence of adverse effects on health, including, but not limited to, behavioral, physiological, toxicological, and biochemical effects; and

(B) to improve knowledge of the short- and long-term effects of air pollutants on welfare.

(2) In carrying out the provisions of this subsection the Administrator may—

(A) conduct epidemiological studies of the effects of air pollutants on mortality and morbidity;

(B) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including carcinogenic, teratogenic, and mutagenic effects of air pollutants;

(C) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers;

(D) utilize the authority contained in paragraphs (1) through (4) of subsection (b) of this section; and

(E) consult with other appropriate Federal agencies to assure that research or studies conducted pursuant to this subsection will be coordinated with research and studies of such other Federal agencies.

(3) In entering into contracts under this subsection, the Administrator is authorized to contract for a term not to exceed 10 years in duration. For the purposes of this paragraph, there are authorized to be appropriated $15,000,000. Such amounts as are appropriated shall remain available until expended and shall be in addition to any other appropriations under this chapter. (July 14, 1955, ch. 360, title I, § 103, formerly § 3, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 394, amended and renumbered Oct. 20, 1965, Pub. L. 89–272, title I, §§ 101(3), 103, 79 Stat. 992, 996; Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 486; Dec. 31, 1970, Pub. L. 91–604, §§ 2(a), 4(2), 15(a)(2), (c)(2), 84 Stat. 1676, 1689, 1710, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (c). Pub. L. 91–604, § 15(a)(2), (c)(2), substituted "Administrator" for "Secretary" and "air pollutants" for "air pollution agents (or combinations of agents)".

Subsec. (d). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91–604, §§ 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein, substituted "1857d" for "1857d(a)", and added references to subsecs. (b) and (c) of section 1857d of this title.

Subsec. (f). Pub. L. 91–604, § 2(a), added subsec. (f).

1967—Subsec. (a). Pub. L. 90–148 substituted "establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research" for "initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfer from fuels" as clause (4) and struck out clause (5) which related to research programs relating to the control of hydrocarbon emissions from evaporation of gasoline and nitrogen and aldehyde oxide emission from gasoline and diesel powered vehicles and relating to the development of improved low cost techniques to reduce emissions of oxides of sulfur produced by the combusion of sulfur-containing fuels.

Subsec. (c). Pub. L. 90–148 struck out provision for the promulgation of criteria in the case of particular air pollution agents present in the air in certain quantities reflecting the latest scientific knowledge and allowing for availability and revision and provided for the recommendation by the Secretary of air quality criteria.

Subsec. (e). Pub. L. 90–148 substituted references to subsections (d), (e), and (f) of section 1857d of this title for references to subsections (c), (d), and (e) of section 1857d of this title in the provision for the admission of advisory findings and recommendations together with the record of the conference and made such findings and recommendations part of the proceedings of the conference, not merely part of the record of proceedings.

1965—Subsec. (a)(5). Pub. L. 89–272, § 103 (3), added par. (5).

Subsecs. (d), (e). Pub. L. 89–272, § 103(4), added subsecs. (d) and (e).

SHORT TITLE

Section 1 of Pub. L. 91–604 provided: "That this Act [amending this chapter generally] may be cited as the 'Clean Air Amendments of 1970'."

§ 1857b–1. Research relating to fuels and vehicles.

(a) Research programs; grants; contracts; pilot and demonstration plants; byproducts research.

The Administrator shall give special emphasis to research and development into new and improved

methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for—

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions.

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to section 529 of Title 31 and section 5 of Title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of Title 10, except that the determination, approval, and certification required thereby shall be made by the Secretary: *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this chapter;

(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

(b) Powers of Administrator in establishing research and development programs.

In carrying out the provisions of this section, the Administrator may—

(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the chapter will be served thereby.

(c) Authorization of appropriations.

For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for the fiscal year ending June 30, 1974. Amounts appropriated pursuant to this subsection shall remain available until expended. (As amended Apr. 9, 1973, Pub. L. 93–15, § 1(a), 87 Stat. 11.)

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–15 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (a)(1). Pub. L. 91–604, § 2(b), added provisions authorizing research programs directed toward development of techniques for improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and producing synthetic or new fuels which result in decreased atmospheric emissions.

Subsec. (a)(2). Pub. L. 91–604, § 2(c), added cls. (B) and (C). Former cl. (B) was redesignated as (D).

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (c). Pub. L. 91–604, § 13(a), substituted provisions authorizing appropriations for fiscal years ending June 30, 1971, 1972, and 1973, for provisions authorizing appropriations for the fiscal years ending June 30, 1968 and 1969.

1969—Subsec. (c). Pub. L. 91–137 authorized appropriation of $45,000,000 for the fiscal year ending June 30, 1970.

§ 1857c. Grants for support of air pollution planning and control programs.

(a) Amounts; limitations; assurances of plan development capability.

(1)(A) The Administrator may make grants to air

pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and seconadry ambient air quality standards.

(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 1857h(b) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municiplities, whether in the same or different States.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 1857c–5 of this title, grants under subparagraph (B) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 1857h(b)(2) and 1857h(b)(4) of this title, the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 1857h(b)(2) and 1857h(b)(4) of this title, the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(b) Terms and conditions; regulations; factors for consideration; expenditure and consultation requirements.

From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(c) State expenditure limitation.

Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

(d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant.

The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 1857g of this title, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this chapter. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency. (July 14, 1955, ch. 360, title I, § 105, formerly § 4, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 395, amended and renumbered § 104, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(2)—(4), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, § 3, 80 Stat. 954, amended and renumbered § 105, Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 489; Dec. 31, 1970, Pub. L. 91–604, §§ 3(a), (b)(1), 15(c)(2), 84 Stat. 1677, 1713.)

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–604, § 3(a), substituted provisions authorizing the Administrator to make grants,

for provisions authorizing the Secretary to make grants, and provisions authorizing grants for programs implementing national primary and secondary ambient air quality standards, for provisions authorizing grants for programs implementing air quality standards authorized by this subchapter, and added the provision requiring grants to air pollution control agencies be made to agencies having substantial responsibilities for carrying out the applicable implementation plan with respect to the air quality control region or portion thereof.

Subsecs. (a)(2), (3), (b), (c). Pub. L. 91–604, § 15(c)(2) substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (d). Pub. L. 91–604, § 3(b)(1), added subsec. (d).

1967—Subsec. (a). Pub. L. 90–148 designated existing provisions as par. (1), added pars. (2) and (3), and, in par. (1) as so designated, substituted "regional air quality control program" for "regional air pollution control program," added planning to the list of authorized activities, and added programs for the implementation of air quality standards authorized by this chapter to the list of authorized programs.

Subsec. (b). Pub. L. 90–148 made minor changes in the order of the provisions.

Subsec. (c). Pub. L. 90–148 reduced the percentage limitation on the portion of the total funds which might be granted for air pollution control programs in any one State from 12½ per centum to 10 per centum.

1966—Subsec. (a). Pub. L. 89–675, § 3(a)(1), struck out provisions limiting the available funds to 20 per centum of the sums appropriated annually for the purpose of this subchapter, inserted provisions allowing grants to air pollution control agencies up to one-half of the cost of maintaining programs for prevention and control of air pollution, and authorized the Secretary to make grants of up to three-fifths of the cost of maintaining regional air pollution control programs.

Subsec. (b). Pub. L. 89–675, § 3(a)(2), substituted reference to sums available "for the purpose of" subsection (a) of this section for reference to sums available "under" subsection (a) of this section, permitted grantees to reduce annual expenditures to the extent that nonrecurrent costs are involved for purposes of application of the provision that no agency may receive grants during any fiscal year when its expenditures of non-Federal funds for air pollution control programs are less than its expenditures for such programs during the preceding year, and added provisions insuring that Federal funds will in no event be used to supplant State or local government funds in maintaining air pollution control programs.

Subsec. (c). Pub. L. 89–675, § 3(b), substituted "total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs" for "grant funds available under subsection (a) of this section shall be expended" and authorized the Secretary to determine the portion of grants to interstate agencies to be charged against the twelve and one-half percent limitation of grant funds to any one State.

1965—Subsec. (a). Pub. L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter", and "section 302(b) (2) and (4)" for "section 9(b) (2) and (4)", which for purposes of codification has been changed to "section 1857h(b) (2) and (4) of this title."

§ 1857c–1. Interstate air quality agencies; program cost limitations.

For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to seciton 1857c–2 of this title, the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of any agency. (July 14, 1955, ch. 360, title I, § 106, as added Nov. 21, 1967, Pub .L. 90–148, § 2, 81 Stat. 490, and amended Dec. 31, 1970, Pub. L. 91–604, § 3(c), 84 Stat. 1677.)

AMENDMENTS

1970—Pub. L. 91–604 struck out lettered designation "(a)", as so redesignated, substituted provisions authorizing Federal grants for the purpose of developing implementation plans and provisions requiring the designated State agency to be capable of recommending plans for implementation of national primary and secondary ambient air quality standards, for provisions authorizing Federal grants for the purpose of expediting the establishment of air quality standards and provisions requiring the designated State agency to be capable of recommending standards of air quality and plans for implementation thereof, respectively, and struck out subsec. (b) which authorized the establishment of air quality planning commissions.

§ 1857c–2. Air quality control regions.

(a) Responsibility of State for air quality; submission of implementation plan.

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions.

For purposes of developing and carrying out implementation plans under section 1857c–5 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States.

The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection. (July 14, 1955, ch. 360, title I, § 107, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1678.)

§ 1857c-3. Air quality criteria and control techniques.

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants.

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) which in his judgment has an adverse affect on public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership.

(1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the technology and costs of emission control. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a) (1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance by Administrator.

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section.

(d) Publication in Federal Register; availability of copies for general public.

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public. (July 14, 1955, ch. 360, title I, § 108, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1678.)

§ 1857c-4. National primary and secondary ambient air quality standards; promulgation; procedure.

(a)(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b)(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same

manner as promulgated. (July 14, 1955, ch. 360, title I, § 109, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1679.)

§ 1857c–5. State implementation plans for national primary and secondary ambient air quality standards.

(a) Submission to Administrator; time for submission; State procedures; required contents of plans for approval by Administrator; approval of revised plan by Administrator.

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 1857c–4 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan, or any portion thereof. The Administrator shall approve such plan or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e) of this section) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 1857h–1 of this title, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

(3) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(4) The procedure referred to in paragraph (2) (D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 1857c–6 of this title will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(b) Extension of period for submission of plan implementing national secondary ambient air quality standard.

The Administrator may, wherever he determines

necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preconditions for preparation and publication by Administrator of proposed regulations setting forth an implementation plan; hearings for proposed regulations; promulgation of regulations by Administrator.

The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(1) the State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(2) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(3) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H) of this section.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(d) Applicable implementation plan.

For purposes of this chapter, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) of this section or promulgated under subsection (c) of this section and which implements a national primary or secondary ambient air quality standard in a State.

(e) Extension of time period for attainment of national primary ambient air quality standard in implementation plan; procedure; approval of extension by Administrator.

(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A)(i) of this section for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) The State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f) Postponement of compliance by any stationary source or class of moving sources with any requirement of an applicable implementation plan; application by Governor of affected State; determination by Administrator; notice and opportunity for hearing; judicial review; precedence of cases; subpenas.

(1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicabiliy of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

(A) good faith efforts have been made to comply with such requirement before such date,

(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

(2)(A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in

such court the record upon which the final decision complained of was issued, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D) of paragraph (1)) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(D) Section 1857h-5(a) of this title (relating to subpoenas) shall be applicable to any proceeding under this subsection. (July 14, 1955, ch. 360, title I, § 110, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1680.)

SAVINGS PROVISIONS

Section 16 of Pub. L. 91-604 provided that:

"(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91-604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 1857c-4(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [1857c-5(c) of this title].

"(2) The amendments made by section 4(b) [amending sections 1857b and 1857d of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 1857d of this title] before the date of enactment of this Act [Dec. 31, 1970].

"(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act."

§ 1857c-6. Standards of performance for new stationary sources.

(a) Definitions.

For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(b) Publication and revision by Administrator of list of categories of stationary sources; inclusion of category in list; proposal of regulations by Administrator establishing standards for new sources within category; promulgation and revision of standards; differentiation within categories of new sources; issuance of information on pollution control techniques; applicability to new sources owned or operated by United States.

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare.

(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publications, such standards with such modifications as he deems appropriate. The Administrator may, from time to time, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance or revisions thereof shall become effective upon promulgation.

(2) The Administrator may distinguish among classes, types and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) Implementation and enforcement by State; procedure; delegation of authority of Administrator to State; enforcement power of Administrator unaffected.

(1) Each State may develop and submit to the

Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Emission standards for any existing source for any air pollutant; submission of State plan to Administrator establishing, implementing and enforcing standards; authority of Administrator to prescribe State plan; authority of Administrator to enforce State plan; procedure.

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 1857c–5 of this title under which each State shall submit to the Administrator a plan which (A) establishes emission standards for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 1857c–3(a) or 1857c–7(b)(1)(A) of this title but (ii) to which a standard of performance under subsection (b) of this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such emission standards.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 1857c–5(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 1857c–8 and 1857c–9 of this title with respect to an implementation plan.

(e) Prohibited acts.

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source. (July 14, 1955, ch. 360, title I, § 111, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1683.)

(As amended Nov. 18, 1971, Pub. L. 92–157, title III, § 302(f), 85 Stat. 464.)

AMENDMENTS

1971—Subsec. (b)(1)(B). Pub. L. 92–157 substituted in first sentence "publish proposed" for "propose".

§ 1857c–7. National emission standards for hazardous air pollutants.

(a) Definitions.

For purposes of this section—

(1) The term "hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term "new source" means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The terms "stationary source", "modification", "owner or operator" and "existing source" shall have the same meaning as such terms have under section 1857c–6(a) of this title.

(b) Publication and revision by Administrator of list of hazardous air pollutants; inclusion of air pollutant in list; proposal of regulations by Administrator establishing standards for pollutant; establishment of standards; standards effective upon promulgation; issuance of information on pollution control techniques.

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutant subject to the provisions of this section.

(c) Prohibited acts; exemption by President for any stationary source; duration and extension of exemption; report to Congress.

(1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of con-

trols and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraph (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(d) Implementation and enforcement by State of standards for stationary sources; procedure; delegation of authority of Administrator to State; enforcement power of Administrator unaffected.

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards (except with respect to stationary sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section. (July 14, 1955, ch. 360, title I, § 112, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1685.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1857c-6, 1857c-8, 1857c-9, 1857d, 1857d-1, 1857e, 1857f, 1857h-2, 1857h-5, 1857h-6 of this title.

§ 1857c-8. Federal enforcement procedures.

(a) Determination of violation of applicable implementation plan or standard; notification of violator; issuance of compliance order or initiation of civil action upon failure to correct; effect of compliance order; contents of compliance order.

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 1857c-6(e) of this title (relating to new source performance standards) or section 1857c-7 (c) of this title (relating to standards for hazardous emissions), or is in violation of any requirement of section 1857c-9 of this title (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b) of this section.

(4) An order issued under this subsection (other than an order relating to a violation of section 1857c-7 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(b) Civil action for appropriate relief; jurisdiction; venue; notice to appropriate State agency.

The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

(1) violates or fails or refuses to comply with any order issued under subsection (a) of this section; or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section of a finding that such person is violating such requirement; or

(3) violates section 1857c-6(e) or section 1857c-7(c) of this title; or

(4) fails or refuses to comply with any requirement of section 1857c-9 of this title.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action

shall be given to the appropriate State air pollution control agency.

(c) Penalties.

(1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a) of this section, or

(C) violates section 1857c-6(e) or section 1857c-7(c) of this title.

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. (July 14, 1955, ch. 360, title I, § 113, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1686.)

(As amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(b), (c), 85 Stat. 464.)

AMENDMENTS

1971—Subsec. (b)(2). Pub. L. 92-157, § 302(b), inserted "(A)" preceding "during" and ", or (B)" following "assumed enforcement".

Subsec. (c)(1)(A). Pub. L. 92-157, § 302(c), inserted "(i)" preceding "during" and ", or (ii)" following "assumed enforcement".

§ 1857c-9. Recordkeeping, inspections, monitoring, and entry.

(a) Authority of Administrator or authorized representative.

For the purpose (i) of developing or assisting in the development of any implementation plan under section 1957c-5 or section 1957c-6(d) of this title any standard of performance under section 1857c-6 of this title, or any emission standard under section 1857c-7 of this title, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out section 1857h-1 of this title—

(1) the Administrator may require the owner or operator of any emission source to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which the owner or operator of such source is required to sample under paragraph (1).

(b) Enforcement procedure by State; delegation of authority of Administrator to State; power of Administrator unaffected.

(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Availability of records, reports, and information to public; disclosure of trade secrets.

Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. (July 14, 1955, ch. 360, title I, § 114, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1687.)

§ 1857d. Abatement of air pollution by means of conference procedure.

(a) Air pollution subject to abatement.

The pollution of the air in any State or States which endangers the health or welfare of any persons and which is covered by subsection (b) or (c) of this section, shall be subject to abatement as provided in this section.

(b) Conferences of air pollution agencies.

(1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges

(causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(2) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate, and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless in the judgment of the Administrator, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

(3) The Administrator may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) of this section is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Administrator shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

(4) A conference may not be called under this subsection with respect to an air pollutant for which (at the time the conference is called) a national primary or secondary ambient air quality standard is in effect under section 1857c–4 of this title.

(c) Participation of foreign countries in conferences.

Whenever the Administrator upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any pollution referred to in subsection (a) of this section which endangers the health or welfare of persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Administrator shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference, and the representative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subsection shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respects to the prevention or control of air pollution occurring in that country as is given that country by this subsection.

(d) Attendance at conference; Federal report of matters before conference; notification of date of conference; presentation of views; transcript of proceedings; summary.

(1) The agencies called to attend any conference under this section may bring such persons as they desire to the conference. The Administrator shall deliver to such agencies and make available to other interested parties, at least thirty days prior to any such conference, a Federal report with respect to the matters before the conference, including data and conclusions or findings (if any); and shall give at least thirty days' prior notice of the conference date to any such agency, and to the public by publication on at least three different days in a newspaper or newspapers of general circulation in the area. The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. The Administrator shall provide that a transcript be maintained of the proceedings of the conference and that a copy of such transcript be made available on request of any participant in the conference at the expense of such participant.

(2) Following this conference, the Administrator shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this chapter; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

(e) Recommendations of Administrator for remedial action by agencies; commencement of recommended action.

If the Administrator believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Adminis-

trator shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

(f) Hearings for failure to abate pollution; board members; findings and recommendations.

(1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Administrator is reasonably calculated to secure abatement of such pollution has not been taken, the Administrator shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Administrator. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Administrator shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Environmental Protection Agency. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters. All interested parties shall be given a reasonable opportunity to present evidence to such hearing board.

(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) of this section is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Administrator concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

(3) The Administrator shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

(g) Judicial proceedings to secure abatement of pollution.

If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Administrator—

(1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subsection (c) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

(h) Federal court proceedings; evidence; jurisdiction of court.

The Court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

(i) Compensation and travel expenses for members of hearing board.

Members of any hearing board appointed pursuant to subsection (f) of this section who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (section 5703 of Title 5) for persons in the Government service employed intermittently.

(j) Furnishing of data to Administrator by polluter; reports; failure to make required report; forfeitures.

(1) In connection with any conference called under this section, the Administrator is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Administrator such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a

report. After a conference has been held with respect to any such pollution the Administrator shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as the Administrator may prescribe, unless additional time be granted by the Administrator. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes section 1905 of Title 18.

(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Administrator for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

(k) Compliance with any requirement of an applicable implementation plan or prescribed standard.

No order or judgment under this section, or settlement, compromise, or agreement respecting any action under this section (whether or not entered or made before December 31, 1970) shall relieve any person of any obligation to comply with any requirement of an applicable implementation plan, or with any standard prescribed under section 1857c–6 or section 1857c–7 of this title. (July 14, 1955, ch. 360, title I, § 115, formerly § 5, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 396, renumbered § 105, and amended Oct. 20, 1965, Pub. L. 89–272, title I, §§ 101(2), (3), 102, 79 Stat. 992, 995, renumbered § 108 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 491, renumbered § 115 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 4(a), (b) (2)–(10), 15(c)(2), 84 Stat. 1678, 1688, 1689, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 4(b)(2), added "and which is covered by subsection (b) or (c) of this section" following "persons".

Subsec. (b). Pub. L. 91–604, §§ 4(b) (3), (4), (5), 15(c)(2), redesignated former subsec. (d)(1) (A), (B), and (C) as (b) (1), (2), and (3), and, as so redesignated, substituted "Administrator" for "Secretary" wherever appearing therein, and added subsec. (b)(4). Former subsec. (b), which related to the encouragement of municipal, State, and interstate action to abate air pollution, was struck out.

Subsec. (c). Pub. L. 91–604, §§ 4(b) (3), (6), 15(c)(2), redesignated former subsec. (d)(1)(D) as (c), and, as so redesignated, substituted "Administrator" for "Secretary" and "Secretary of Health, Education, and Welfare" wherever appearing therein and "subsection" for "subparagraph" wherever appearing therein. Former subsec. (c), which related to the procedure for the promulgation of State air quality standards, was struck out.

Subsec. (d). Pub. L. 91–604, §§ 4(b) (4), (6), (7), (8), 15(c)(2), redesignated former subsec. (d) (2) and (3) as (d)(1) and (2), and, as so redesignated, in (d)(1) substituted "Administrator" for "Secretary" wherever appearing therein and "any conference under this section" for "such conference", and in (d)(2) substituted "Administrator" for "Secretary". Former subsec. (d)(1) (A), (B), and (C) were redesignated as (b) (1), (2), and (3), respectively, and subsec. (d)(1)(D) was redesignated as (c).

Subsec. (e). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (f). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (g). Pub. L. 91–604, §§ 4(b)(9), 15(c)(2), substituted "Administrator" for "Secretary" and "subsection (c)" for "subparagraph (D) of subsection (d)".

Subsec. (i). Pub. L. 91–604, § 15(c)(2) substituted "Administrator" for "Secretary".

Subsec. (j). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (k). Pub. L. 91–604, § 4(b) (3), (10), substituted provisions relating to compliance with any requirement of an applicable implementation plan or with any standard prescribed under section 1857c–6 of this title or section 1857c–7 of this title, for provisions relating to the enjoining of imminent and substantial endangerment from pollution sources.

1967—Subsec. (b). Pub. L. 90–148 substituted reference to subsecs. (c), (h), or (k) of this section for reference to subsec. (g) of this section.

Subsec. (c). Pub. L. 90–148 added subsec. (c). Former subsec. (c) redesignated as subsec. (d) and amended.

Subsec. (d). Pub. L. 90–148 redesignated former subsec. (c) as subsec. (d) and, subsec. (d) as so redesignated, inserted into par. (2) provisions for the delivery prior to the conference of a Federal report to agencies and interested parties covering matters before the conference, raised from three weeks to thirty days the required notice of the conference, and added provisions for notice by newspapers, presentation of views on the Federal report, and transcript of proceedings. Former subsec. (d) redesignated as subsec. (e).

Subsec. (e). Pub. L. 90–148 redesignated former subsec. (d) as subsec. (e). Former subsec. (e) redesignated as subsec. (f) and amended.

Subsec. (f). Pub. L. 90–148 redesignated former subsec. (e) as subsec. (f) and, in subsec. (f) as so redesignated, inserted into par. (1) requirement that all interested parties be given a reasonable opportunity to present evidence to the hearing board. Former subsec. (f) redesignated as subsec. (g) and amended.

Subsec. (g). Pub. L. 90–148 redesignated former subsec. (f) as subsec. (g) and, in subsec. (g) as redesignated, substituted reference to subsec. (d) of this section for reference to subsec. (c) of this section. Former subsec. (g) redesignated as subsec. (h) and amended.

Subsec. (h). Pub. L. 90–148 redesignated former subsec. (g) as subsec. (h) and, in subsec. (h) as so redesignated, substituted reference to subsec. (g) of this section for reference to subsec. (f) of this section. Former subsec. (h) redesignated as subsec. (i) and amended.

Subsec. (i). Pub. L. 90–148 redesignated former subsec. (h) as subsec. (i) and, in subsec. (i) as so redesignated, substituted reference to subsec. (f) of this section for reference to subsec. (e) of this section and raised the per diem maximum from $50 to $100. Former subsec. (i) redesignated as subsec. (j).

Subsec. (j). Pub. L. 90–148 redesignated former subsec. (i) as subsec. (j).

Subsec (k). Pub. L. 90–148 added subsec. (k).

1965—Subsec. (b). Pub. L. 89–272, § 101(2), substi-

tuted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter."

Subsec. (c)(1)(D). Pub. L. 89-272, § 102(a), added subpar. (D).

Subsec. (d)(3). Pub. L. 89-272, § 101(2), substituted "subchapter" for "chapter".

Subsec. (f)(1). Pub. L. 89-272, § 102(b), inserted "(A)" and added cl. (B).

§ 1857d-1. Retention of State authority.

Except as otherwise provided in sections 1857f-6a, 1857f-6c(c)(4) and 1857f-11 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 1857c-6 or section 1857c-7 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section. (July 14, 1955, ch. 360, title I, § 116, formerly § 109, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 497, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, § 4(a), (c), 84 Stat. 1678, 1689.)

AMENDMENTS

1970—Pub. L. 91-604, § 4(c), substituted provisions which authorized any State or political subdivision thereof to adopt or enforce, except as otherwise provided, emission standards or limitations under the specified conditions, or any requirement respecting control or abatement of air pollution, for provisions which authorized any State, political subdivision, or intermunicipal or interstate agency to adopt standards and plans to achieve a higher level of air quality than approved by the Secretary.

§ 1857e. Air Quality Advisory Board; advisory committees.

(a) Establishment of Board; membership; appointment; term.

(1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating and active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

(2) Each member appointed by the President shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the members first taking office pursuant to this subsection shall expire as follows: five at the end of one year after the date of appointment, five at the end of two years after such date, and five at the end of three years after such date, as designated by the President at the time of appointment, and (C) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members shall be eligible for reappointment within one year after the end of his preceding term, unless such term was for less than three years.

(b) Duties of Board.

The Board shall advise and consult with the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter and make such recommendations as it deems necessary to the President.

(c) Clerical and technical assistance.

Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory committees as hereinafter authorized shall be provided from the personnel of the Environmental Protection Agency.

(d) Advisory committees.

In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics or technology.

(e) Compensation; travel expenses.

The members of the Board and other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings of the Board or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(f) Consultations by Administrator.

Prior to—

(1) issuing criteria for an air pollutant under section 1857c-3(a)(2) of this title,

(2) publishing any list under section 1857c-6(b)(1)(A) or section 1857c-7(b)(1)(A) of this title,

(3) publishing any standard under section 1857c-6(b)(1)(B) or section 1857c-7(b)(1)(B) of this title, or

(4) publishing any regulation under section 1857f-1(a) of this title,

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independence ex-

perts, and Federal departments and agencies. (July 14, 1955, ch. 360, title I, §§ 117 formerly § 6, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 399, renumbered § 106, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(3), 79 Stat. 992, renumbered § 110 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 498, renumbered § 117 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), (d), 15(c)(2), 84 Stat. 1678, 1689, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted "Environmental Protection Agency" for "Department of Health, Education, and Welfare" and "Administrator" for "Secretary".

Subsec. (b). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (c). Pub. L. 91-604, § 15(c)(2), substituted "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (d). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (f). Pub. L. 91-604, § 4(d), added subsec. (f).

1967—Subsec. (a). Pub. L. 90-148 substituted provisions establishing in the Department of Health, Education, and Welfare an Air Quality Advisory Board and providing for the appointment and term of its members for provisions directing the Secretary to maintain liaison with manufacturers looking toward development of devices and fuels to reduce pollutants in automotive exhaust and to appoint a technical committee and call it together from time to time to evaluate progress and develop and recommend research programs.

Subsec. (b). Pub. L. 90-148 substituted provision setting out the duties of the Air Quality Advisory Board for provisions requiring the Secretary to make semi-annual reports to Congress on measures being taken toward the resolution of vehicle exhaust pollution problems.

Subsecs. (c)—(e). Pub. L. 90-148 added subsec. (c)—(e).

§ 1857f. Control and abatement of air pollution from Federal facilities; compliance of Federal departments, etc., with Federal, State, interstate, and local requirements; exemption by President of any emission source from any executive branch department, etc.; report to Congress.

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 1857c-6 of this title, and an exemption from section 1857c-7 may be granted only in accordance with section 1857c-7(c) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption. (July 14, 1955, ch. 360, title I, § 118, formerly § 7, as added Dec. 17, 1963, Pub. L. 88-206,, § 1, 77 Stat. 399, renumbered § 107, Oct. 20, 1965, Pub. L. 89-272, title I, 101(3), 79 Stat. 992, renumbered § 111 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499, renumbered § 118 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), 5, 84 Stat. 1678, 1689.)

AMENDMENTS

1970—Pub. L. 91-604, § 5, struck out lettered designations (a) and (b), and, as so redesignated, substituted provisions requiring Federal facilities to comply with Federal, State, local, and interstate air pollution control and abatement requirements and provisions authorizing the President to exempt, under the specified terms and conditions, any emission source of any department, etc., in the executive branch from compliance with control and abatement requirements, for provisions requiring, to the extent practicable and consistent with the interests of the United States and within any available appropriations, Federal facilities to cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency to prevent and control air pollution and provisions authorizing the Secretary to establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any facility was required to obtain a permit, under the specified terms and conditions, for the discharge of any matter into the air of the United States.

1967—Pub. L. 90-148 reenacted section without change.

5. Clean Air—Administration

Ex. Order 11602, 36 F.R. 12475

(See Ex. Order 11602 under title III *Executive Orders*)

6. Control and Abatement of Aircraft Noise

49 U.S.C. 1431

§ 1431. Control and abatement of aircraft noise and sonic boom.

(a) Definitions.

For purposes of this section:

(1) The term "FAA" means Administrator of the Federal Aviation Administration.

(2) The term "EPA" means the Administrator of the Environmental Protection.

(b) Consultations; standards; rules and regulations; aircraft certificates.

(1) In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, the FAA, after consultation with the Secretary of Transportation and with EPA, shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this subchapter. No exemption with respect to any standard or regulation under this section may be granted under any provision of this chapter unless the FAA shall have consulted with EPA before such exemption is granted, except that if the FAA determines that safety in air commerce or air transportation requires that such an exemption be granted before EPA can be consulted, the FAA shall consult with EPA as soon as practicable after the exemption is granted.

(2) The FAA shall not issue an original type certificate under section 1423(a) of this title for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom, consistent with the considerations listed in subsection (d) of this section.

(c) Submission of proposed regulations to FAA by EPA; publication; hearing; review of prescribed regulations; report and supplemental report.

(1) Not earlier than the date of submission of the report required by section 4906 of Title 42, EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as EPA determines is necessary to protect the public health and welfare. The FAA shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of the date of its submission to the FAA, publish the proposed regulations in a notice of proposed rulemaking. Within sixty days after such publication, the FAA shall commence a hearing at which interested persons shall be afforded an opportunity for oral (as well as written) presentations of data, views, and arguments. Within a reasonable time after the conclusion of such hearing and after consultation with EPA, the FAA shall—

(A) in accordance with subsection (b) of this section, prescribe regulations (i) substantially as they were submitted by EPA, or (ii) which are a modification of the proposed regulations submitted by EPA, or

(B) publish in the Federal Register a notice that it is not prescribing any regulation in response to EPA's submission of proposed regulations, together with a detailed explanation providing reasons for the decision not to prescribe such regulations.

(2) If EPA has reason to believe that the FAA's action with respect to a regulation proposed by EPA under paragraph (1)(A)(ii) or (1)(B) of this subsection does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations listed in subsection (d) of this section, EPA shall consult with the FAA and may request the FAA to review, and report to EPA on, the advisability of prescribing the regulation originally proposed by EPA. Any such request shall be published in the Federal Register and shall include a detailed statement of the information on which it is based. The FAA shall complete the review requested and shall report to EPA within such time as EPA specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The FAA's report shall be accompanied by a detailed statement of the FAA's findings and the reasons for the FAA's conclusions; shall identify any statement filed pursuant to section 4332(2)(C) of Title 42 with respect to such action of the FAA under paragraph (1) of this subsection; and shall specify whether (and where) such statements are available for public inspection. The FAA's report shall be published in the Federal Register, except in a case in which EPA's request proposed specific action to be taken by the FAA, and the FAA's report indicates such action will be taken.

(3) If, in the case of a matter described in paragraph (2) of this subsection with respect to which no statement is required to be filed under such section 4332(2)(C) of Title 42, the report of the FAA indicates that the proposed regulation originally submitted by EPA should not be made, then EPA may request the FAA to file a supplemental report, which shall be published in the Federal Register within such a period as EPA may specify (but such time specified shall not be less than ninety days from the date the request was made), and which shall contain a comparison of (A) the environmental effects (including those which cannot be avoided) of the action actually taken by the FAA in response to EPA's proposed regulations, and (B) EPA's proposed regulations.

(d) Considerations determinative of standards, rules, and regulations.

In prescribing and amending standards and regulations under this section, the FAA shall—

(1) consider relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to this chapter and chapter 23 of this title;

(2) consult with such Federal, State, and interstate agencies as he deems appropriate;

(3) consider whether any proposed standard or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

(4) consider whether any proposed standard or regulation is economically reasonable, technologi-

cally practicable, and appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply; and

(5) consider the extent to which such standard or regulation will contribute to carrying out the purposes of this section.

(e) Amendment, modification, suspension, or revocation of certificate; notice and appeal rights.

In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards or regulations is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 1429 of this title, and in any appeal to the National Transportation Safety Board, the Board may amend, modify, or reverse the order of the FAA if it finds that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require the affirmation of such order, or that such order is not consistent with safety in air commerce or air transportation. (As amended Pub. L. 92–574, § 7(b), Oct. 27, 1972, 86 Stat. 1239.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–574 added subsec. (a). Former subsec. (a) redesignated (b)(1).

Subsec. (b)(1). Pub. L. 92–574 redesignated former subsec. (a) as subsec. (b)(1) and in subsec. (b)(1) as so redesignated added requirement that the Administrator of the Federal Aviation Administration consult with the Administrator of the Environmental Protection Agency before prescribing and amending standards and added provisions for consultation in connection with the grant of exemptions with respect to standards and regulations under this section. Former subsec. (b) redesignated (d).

Subsec. (b)(2). Pub. L. 92–574 added subsec. (b)(2). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 92–574 added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 92–574 redesignated former subsec. (b) as (d).

Subsec. (e). Pub. L. 92–574 redesignated former subsec. (c) as (e).

7. Directing Federal Agencies To Cooperate With State and Local Authorities in Preventing Pollution of the Atmosphere

Ex. Order 10779

(See Ex. Order 10779 under title III *Executive Orders*)

8. Emission Standards for Moving Sources

42 U.S.C. 1857f–1 through 1857f–12

Sec.

§ 1857f–1. Establishment of standards.

(a) Air pollutant emissions.

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section), whether such vehicles and engines are designed as complete systems or incorporated devices to prevent or control such pollution.

(2) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) Model year 1975, reduction requirement; model year 1976, reduction requirement; promulgation; report to Congress; suspension of standards; interim standards.

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light duty vehicles and engines manufactured during or after model year 1975 shall contain standards which require a reduction of at least 90 per centum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during or after model year 1976 shall contain standards which require a reduction of at least 90 per centum from the average of emissions of oxides of nitrogen actually measured from light duty vehicles manufactured during model year 1971 which are not subject to any Federal or State emission standard for oxides of nitrogen. Such average of emissions shall be determined by the Administrator on the basis of measurements made by him.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.

(3) For purposes of this part—

(A)(i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) The term "light duty vehicles and engines" means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 1857h–5(a) of this title (relating to subpenas) shall apply.

(5)(A) At any time after January 1, 1972, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard

required by paragraph (1)(A) with respect to such manufacturer. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A)) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1975.

(B) At any time after January 1, 1973, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(B) with respect to such manufacturer. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(B)) to emissions of oxides of nitrogen from such vehicles and engines manufactured during model year 1976.

(C) Any interim standards prescribed under this paragraph shall reflect the greatest degree of emission control which is achievable by application of technology which the Administrator determines is available, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

(D) Within 60 days after receipt of the application for any such suspension, and after public hearing, the Administrator shall issue a decision granting or refusing such suspension. The Administrator shall grant such suspension only if he determines that (i) such suspension is essential to the public interest or the public health and welfare of the United States, (ii) all good faith efforts have been made to meet the standards established by this subsection, (iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, and (iv) the study and investigation of the National Academy of Sciences conducted pursuant to subsection (c) of this section and other information available to him has not indicated that technology, processes, or other alternatives are available to meet such standards.

(E) Nothing in this paragraph shall extend the effective date of any emission standard required to be prescribed under this subsection for more than one year.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information.

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles.

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 1857f–5a of this title. Such regulations shall provide that useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs; and

(2) in the case of any other motor vehicle or motor vehicle engine, be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate.

(e) New power sources or propulsion systems.

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 1857f–5(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers the public health or welfare but for which standards have not been prescribed under subsection (a) of this section. (July 14, 1955, ch. 360, title II, § 202, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91–604, § 6(a), 84 Stat. 1690.)

AMENDMENTS

1970—Subsec. (a) Pub. L. 91–604 redesignated existing provisions as par. (1) and, in par. (1) as so redesignated, substituted Administrator for Secretary as the issuing authority for standards, inserted references to the useful life of engines, and substituted the emission of any air pollutant for the emission of any kind of substance as the subject to be regulated, and added par. (2).

Subsec. (b). Pub. L. 91–604 added subsec. (b). Former subsec. (b) redesignated as par. (2) of subsec. (a).

Subsecs. (c)–(e). Pub. L. 91–604 added subsecs. (c)–(e).

1967—Pub. L. 90–148 reenacted section without change.

§ 1857f–2. Prohibited acts.

(a) Manufacture, sale, or importation of vehicles or engines not in conformity with regulations; failure to make reports or provide information; removal of devices installed in conformity with regulations; prohibited sale or lease of vehicles or engines.

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part (except as provided in subsection (b) of this section);

(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 1857f–6 of this title;

(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 1857f–1 of this title—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with the requirements of section 1857f–5a (a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 1857f–5a(c)(3) of this title, or

(B) to fail or refuse to comply with the requirements of section 1857f–5a(c) or (e) of this title.

(b) Authority of Administrator to make exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export.

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a) of this section, upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) of this section shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a) of this section, except that if the country of export has emission standards which differ from the standards prescribed under subsection (a) of this section, then such vehicle or engine shall comply with the standards of such country of export.

(c) Exemptions; annual report of exemptions to Congress.

Upon application therefor, the Administrator may exempt from subsection (a)(3) of this section any vehicles (or class thereof) manufactured before the 1974 model year from subsection (a)(3) of this section[1] for the purpose of permitting modifications to the emission control device or system of such vehicle in order to use fuels other than those specified in certification testing under section 1857f–5(a)(1) of this title, if the Administrator, on the basis of information submitted by the applicant, finds that such modification will not result in such vehicle or engine not complying with standards under section 1857f–1 of this title applicable to such vehicle or engine. Any such exemption shall identify (1) the vehicle or vehicles so exempted, (2) the specific nature of the modification, and (3) the person or class of persons to whom the exemption shall apply.

[1] So in original.

(July 14, 1955, ch. 360, title II, § 203, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 993, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91–604, §§ 7(a), 11(a)(2)(A); 15(c)(2), 84 Stat. 1693, 1705, 1713.)

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–604, § 7(a)(1), struck out reference to the manufacture of new motor vehicles or new motor vehicle engines for sale, inserted provision for issuance by the Administrator of regulations regarding exceptions in the case of importation of new motor vehicles or new motor vehicle engines, and substituted "importation" into the United States of such units for "importation for sale or resale" into the United States of such units.

Subsec. (a)(2). Pub. L. 91–604, § 7(a)(2), substituted "section 208" for "section 207", both of which, for purposes of codification, are translated as "section 1857f–6 of this title".

Subsec. (a)(3). Pub. L. 91–604, §§ 7(a)(3), 11(a)(2)(A), substituted "part" for "subchapter" and added provisions prohibiting the knowing removal or inoperation by manufacturers or dealers of devices or elements of design after sale and delivery to the ultimate purchaser.

Subsec. (a)(4). Pub. L. 91–604, § 7(a)(4), added subsec. (a)(4).

Subsec. (b)(1). Pub. L. 91–604, §§ 7(a)(5), 15(c)(2), struck out reference to the exemption of a class of new motor vehicles or new motor vehicle engines, struck out the protection of the public health and welfare from the enumeration of purposes for which exemptions may be made, and substituted "Administrator" for "Secretary".

Subsec. (b)(2). Pub. L. 91–604, §§ 7(a)(6), 11(a)(2)(A), 15(c)(2), substituted "Administrator" for "Secretary of Health, Education, and Welfare", "importation or imported by any person" for "importation by a manufacturer", and "part" for "subchapter".

Subsec. (b)(3). Pub. L. 91–604, § 7(a)(7)(A), added provision that, if the country of export has emission standards which differ from the standards prescribed under subsec. (a), such vehicle or engine must comply with the standards of such country of export.

Subsec. (c). Pub. L. 91–604, § 7(a)(7)(B), added subsec. (c).

1967—Subsec. (a). Pub. L. 90–148 substituted "conformity with regulations prescribed under this subchapter" for "conformity with regulations prescribed under section 1857f–1 of this title" in par. (1).

§ 1857f–3. Jurisdiction of district court to restrain violations; actions brought by or in name of United States; territorial scope of subpenas for witnesses.

(a) The district courts of the United States shall have jurisdiction to restrain violations of paragraph (1), (2), (3), or (4) of section 1857f–2(a) of this title.

(b) Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district. (July 14, 1955, ch. 360, title II, § 204, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91–604, § 7(b), 84 Stat. 1694.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604 inserted reference to par. (4) of section 1857f–2(a) of this title.

1967—Pub. L. 90–148 reenacted section without change.

§ 1857f–4. Penalties for violations; separate offenses.

Any person who violates paragraph (1), (2), (3) or (4) of section 1857f–2(a) of this title shall be subject to a civil penalty of not more than $10,000. Any such violation with respect to paragraph (1), (2), or (4) of section 1857f–2(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. (July 14, 1955, ch. 360, title I, § 205, as added Oct. 20, 1965. Pub. L. 89–272, title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91–604, § 7(c), 84 Stat. 1694.)

AMENDMENTS

1970—Pub. L. 91–604 increased the upper limit of the allowable fine from "$1,000" to "$10,000".

1967—Pub. L. 90–148 reenacted section without change.

§ 1857f–5. Motor vehicle and motor vehicle engine compliance testing and certification.

(a) Testing and issuance of certificate of conformity.

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 1857f–1 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 1857f–1(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(b) Testing procedures; hearing; judicial review; additional evidence.

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the

date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations, and he shall so notify the manufacturer.

(B) (i) At the request of any maufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of Title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of Title 5 and to grant appropriate relief as provided in such chapter.

(c) Inspection.

For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

(d) Rules and regulations.

The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) Publication of test results.

The Administrator shall announce in the Federal Register and make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 1857f–1 of this title. (July 14, 1955, ch. 360, title II, § 206, as added Dec. 31, 1970, Pub. L. 91–604, § 8(a), 84 Stat. 1694.)

§ 1857f–5a. Compliance by vehicles and engines in actual use.

(a) Warranty.

Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (1) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 1857f–1 of this title, and (2) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 1857f–1(d) of this title).

(b) Testing methods and procedures.

If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its useful life (as determined under section 1857f–1(d) of this title), each vehicle and engine to which regulations under section 1857f–1 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii)

such methods and procedures are reasonably capable of being correlated with tests conducted under section 1857f–5(a)(1) of this title, then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under under section 1857f–1 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3) of this section,

(B) it fails to conform at any time during its useful life (as determined under section 1857f–1(d) of this title) to the regulations prescribed under section 1857f–1 of this title, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer.

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use.

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 1857f–1 of this title, when in actual use throughout their useful life (as determined under section 1857f–1(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulation require.

(3) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine such written instructions for the maintenance and use of the vehicle or engine by the ultimate purchaser as may be reasonable and necessary to assure the proper functioning of emission control devices and systems. In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 1857f–1 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(d) Dealer costs borne by manufacturer.

Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) of this section shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(e) Cost statement.

If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 1857j of this title.

(f) Inspection after sale to ultimate purchaser.

Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1) of this section, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program. (July 14, 1955, ch. 360, title II, § 207, as added Dec. 31, 1970, Pub. L. 91–604, § 8(a), 84 Stat. 1696.)

§ 1857f–6. Reports, records, and information required; access to and copying records; availability to public; disclosure of trade secrets.

(a) Every manufacturer shall establish and main-

tain such records, make such reports, and provide such information, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this part and regulations thereunder and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times, to have access to and copy such records.

(b) Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under his control, from the duly authorized committees of the Congress. (July 14, 1955, ch. 360, title II, § 208, formerly § 207, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994, amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub. L. 90–604, §§ 8(a), 10(a), 11(a)(2)(A), 15(c)(a), 84 Stat. 1694, 1700, 1705, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, §§ 11(a)(2)(A), 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein and "part" for "subchapter".

Subsec. (b). Pub. L. 91–604, §§ 10(a), 15(c)(2), substituted provisions authorizing the Administrator to make available to the public any records, reports, of information obtained under subsec. (a) of this section, except those shown to the Administrator to be entitled to protection as trade secrets, for provisions that all information reported or otherwise obtained by the Secretary or his representative pursuant to subsec. (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, be considered confidential for the purpose of such section 1905, and substituted "Administrator" for "Secretary".

1967—Pub. L. 90–148 reenacted section without change.

§ 1857f–6a. State standards.

(a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 1857f–1(a) of this title.

(c) Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles. (July 14, 1955, ch. 306, title II, § 209, formerly § 208, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1705, 1713.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 11(a)(2)(A), substituted "part" for "subchapter".

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (c). Pub. L. 91–604, § 11(a)(2)(A), substituted "part" for "subchapter".

§ 1857f–6b. Federal assistance in developing and maintaining vehicle emission devices and systems inspection and emission testing and control programs.

The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) No such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of Title 23; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

(July 14, 1955, ch. 306, title II, § 210, formerly § 209, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 502, renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 10(b), 84 Stat. 1694, 1700.)

AMENDMENTS

1970—Pub. L. 91–604 substituted provisions authorizing the Administrator to make grants to appropriate State agencies for the development and maintenance of effective vehicle emission devices and systems inspection and emission testing and control programs, for provisions authorizing the Secretary to make grants to appropriate State air pollution control agencies for the development of meaningful uniform motor vehicle emission device inspection and emission testing programs.

§ 1857f–6c. Regulation of fuels.

(a) Authority of Administrator to regulate.

The Administrator may by regulation designate any fuel or fuel additive and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

(b) Registration requirement.

(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions, resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

(c) Control or prohibition of offending fuels and fuel additives.

(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 1857f–1 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 1857h–5(a) of this title (relating to subpenas) shall be applicable.

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibi-

tion or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 1857f–6a(a) of this title has at any time been waived under section 1857f–6a(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 1857c–5 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

(d) Penalty.

Any person who violates subsection (a) of this section or the regulation prescribed under subsection (c) of this section or who fails to furnish any information required by the Administrator under subsection (b) of this section shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications. (As amended Nov. 18, 1971, Pub. L. 92–157, title III, § 302(d), (e), 85 Stat. 464.)

AMENDMENTS

1971—Subsec. (c)(3)(A). Pub. L. 92–157, § 302(d), substituted "purpose of obtaining" for "purpose of."

Subsec. (d). Pub. L. 92–157, § 302(e), substituted "subsection (b)" for "subsection (c)" where appearing the second time.

1970—Subsec. (a). Pub. L. 91–604, § 9(a), substituted "Administrator" for "Secretary" as the registering authority, added references to fuel additives, and substituted the selling, offering for sale, and introduction into commerce of fuel or fuel additives, for the delivery for introduction into interstate commerce or delivery to another person who can reasonably be expected to deliver fuel into interstate commerce.

Subsec. (b). Pub. L. 91–604, § 9(a), designated existing provisions as pars. (1) and (3), added par. (2), and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (c). Pub. L. 91–604, § 9(a), substituted provisions covering the control or prohibition of offending fuels and fuel additives, for provisions covering trade secrets and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 91–604, § 9(a), added references to failure to obey regulations prescribed under subsec. (c) and failure to furnish information required by the Administrator under subsec. (c), increased the daily civil penalty from $1,000 to $10,000 and substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91–604, § 9(a), struck out subsec. (e) which directed the various United States Attorneys to prosecute for the recovery of forfeitures.

§ 1857f–6d. Repealed. Pub. L. 91–604, § 8(a), Dec. 31, 1970, 84 Stat. 1694.

Section, act July 14, 1955, ch. 360, title II, § 211, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 503, provided for a national emissions standards study for stationary sources to be conducted by the Secretary, with a report and recommendations to be submitted to the Congress by Nov. 21, 1969, and for a study of the feasibility of controls for jet and piston aircraft engines, with a report thereon to Congress by Nov. 21, 1968.

§ 1857f–6e. Low-emission vehicles.

(a) Definitions.

For the purpose of this section—

(1) The term "Board" means the Low-Emission Vehicle Certification Board.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "motor vehicle" means any self-propelled vehicle designed for use in the United States on the highways, other than a vehicle designed or used for military field training, combat, or tactical purposes.

(4) The term "low-emission vehicle" means any motor vehicle which—

(A) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 1857f–1 of this title at the time of procurement to that type of vehicle; and

(B) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 1875f–1 of this title at the time of procurement to that type of vehicle.

(5) The term "retail price" means (A) the maximum statutory price applicable to any class or model of motor vehicle; or (B) in any case where three is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

(b) Low-Emission Vehicle Certification Board; establishment; composition; appointment; Chairman; compensation; travel expenses; employment and compensation of additional personnel; time and place of meetings; powers.

(1) There is established a Low-Emission Vehicle Certification Board to be composed of the Administrator or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman..

(2) Any member of the Board not employed by the United States may receive compensation at the rate of $125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(3)(A) The Chairman, with the concurrence of the members of the Board, may employ and fix the

compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS–18 by section 5332 of Title 5.

(B) The Chairman may fix the time and place of such meetings as may be required, but a meeting of the Board shall be called whenever a majority of its members so request.

(C) The Board is granted all other power necessary for meeting its responsibilities under this section.

(c) Determination by Administrator of models or classes of motor vehicles qualifying as low-emission vehicles.

The Administrator shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

(d) Certification by Board; specifications for suitable substitutes; criteria for certification; term of certification; procedure for certification.

(1) The Board shall certify any class or model of motor vehicles—

(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

(B) which is a low-emission vehicle as determined by the Administrator; and

(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In making the determination under this subsection the Board shall consider the following criteria:

(i) the safety of the vehicle;

(ii) its performance characteristics;

(iii) its reliability potential;

(iv) its serviceability;

(v) its fuel availability;

(vi) its noise level; and

(vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

(2) Certification under this section shall be effective for a period of one year from the date of issuance.

(3)(A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in accordance with regulations prescribed by the Board.

(B) The Board shall publish a notice of each application received in the Federal Register.

(C) The Administrator and the Board shall make determinations for the purpose of this section in accordance with procedures prescribed by regulation by the Administrator and the Board, respectively.

(D) The Administrator and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in regulations prescribed under subparagraph (A).

(E) The Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

(F) Within 90 days after the receipt of a properly filed certification application, the Administrator shall determine whether such class or model of vehicle is a low-emission vehicle, and within 180 days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board any dissenting views.

(e) Acquisition by Federal government by purchase or lease; procurement costs; contract provisions.

(1) Certified low-emission vehicles shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

(2) In order to encourage development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an inherently low-polluting propulsion system.

(3) Data relied upon by the Board and the Administrator in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

(f) Priority for purchase by procuring agency.

The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible certified low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

(g) Waiver of statutory price limitations.

For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

(h) Testing of emissions from certified low-emission vehicles purchased by the Federal government; procedure; recertification.

The Administrator shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Administrator shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

(i) Authorization of appropriations.

There are authorized to be appropriated for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section, $5,000,000 for the fiscal year ending June 30, 1971, and $25,000,000 for each of the three succeeding fiscal years.

(j) Promulgation by Board of implementing procedures.

The Board shall promulgate the procedures required to implement this section within one hundred and eight days after December 31, 1970. (July 14, 1955, title II, § 212, as added Dec 31, 1970, Pub. L. 91–604, § 10(c), 84 Stat. 1700.)

§ 1857f–7. Definitions.

As used in this part—

(1) The term manufacturer as used in sections 1857f–1, 1857f–2, 1857f–5, 1857f–6, and 1857f–6a of this title means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicles engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 1857f–1 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(July 14, 1955, ch. 360, title II, § 213, formerly § 208, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994, renumbered § 212, and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 503, renumbered § 213, and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 10(d), 11(a)(2)(A), 84 Stat. 1694, 1703, 1705.)

AMENDMENTS

1970—Pub. L. 91–604, § 11(a)(2)(A), substituted "part" for "subchapter".

Par. (1). Pub. L. 91–604, § 10(d)(1), added reference to section 1857f–1 of this title.

Par. (3). Pub. L. 91–604, § 10(d)(2), added the provisions which defined such terms with respect to imported vehicles or engines.

1967—Pub. L. 90–148 inserted "as used in sections 1857f–2, 1857f–5, 1857f–6, and 1857f–6a of this title" following "manufacturer" in par. (1).

§ 1857f–8. Repealed. Pub. L. 89–675, § 2(b), Oct. 15, 1966, 80 Stat. 954.

Section, act July 14, 1955, ch. 360, title II, § 209, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 995, authorized appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, to carry out sections 1857f–1 to 1857f–7. See section 1857*l* of this title.

PART B.—AIRCRAFT EMISSION STANDARDS

§ 1857f–9. Establishment of standards.

(a) Study; report; hearings; issuance of regulations.

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2) Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations.

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Consultation with Secretary of Transportation.

Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety. (July 14, 1955, ch. 360, title II, § 231, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1703.)

§ 1857f–10. Enforcement of standards; regulations by Secretary of Transportation; proceedings to amend, modify, suspend, or revoke certificates.

(a) The Secretary of Transportation, after consulation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 1857f-9 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and, may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 1857f–9 of this title or of a regulation prescribed under subsection (a) of this section is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation. (July 14, 1955, ch. 360, title II, § 232, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1704.)

§ 1857f–11. State standards and controls.

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part. (July 14, 1955, ch. 360, title II, § 233, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1704.)

§ 1857f–12. Definitions.

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 1301 of Title 49. (July 14, 1955, ch. 360, title II, § 234, as added Dec. 31, 1970, Pub. L. 91–604, § 11(a)(1), 84 Stat. 1705.)

9. Federal Facilities—Abatement of Air Pollution

Ex. Order 11507, 35 F.R. 2573

(See Ex. Orders 10779 and 11507 under title III *Executive Orders*)

10. Highway Standards—Noise Level

23 U.S.C. 109

§ 109. Standards.

(a) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State highway departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project.

The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. Such standards shall in all cases provide for at least four lanes of traffic. The Secretary shall apply such standards uniformly throughout all the States.

(c) Projects on the Federal-aid secondary system in which Federal funds participate shall be constructed according to specifications that will provide all-weather service and permit maintenance at a reasonable cost.

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State highway department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

(e) No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of this title, unless proper safety protective devices complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, gutters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

(g) The Secretary shall issue within 30 days after the day of enactment of the Federal-Aid Highway Act of 1970 guidelines for minimizing possible soil erosion from highway construction. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(h) Not later than July 1, 1972, the Secretary, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than 90 days after such submission, promulgate guidelines designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

(1) air, noise, and water pollution;

(2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;

(3) adverse employment effects, and tax and property values losses;

(4) injurious displacement of people, businesses and farms; and

(5) disruption of desirable community and regional growth.

Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(i) The Secretary, after consultation with appropriate Federal, State, and local officials, shall develop and promulgate standards for highway noise levels compatible with different land uses and after July 1, 1972, shall not approve plans and specifications for any proposed project on any Federal-aid system for which location approval has not yet been secured unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards. The Secretary, after consultation with the Administrator of the Environmental Protection Agency and appropriate Federal, State, and local officials, may promulgate standards for the control of highway noise levels for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972. The Secretary may approve any project on a Federal-aid system to which noise-level standards are made applicable under the preceding sentence for the purpose of carrying out such standards. Such project may include, but is not limited to, the acquisition of additional rights-of-way, the construction of physical barriers, and landscaping. Sums apportioned for the Federal-aid system on which such project will be located shall be available to finance the Federal share of such project. Such project shall be deemed a highway project for all purposes of this title.

(j) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 894; Pub. L. 88–157, § 4, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89–574, §§ 5 (a), 14 Sept. 13, 1966, 80 Stat. 767, 771; Pub. L. 91–605, title I, § 136(a), (b), Dec. 31, 1970, 84 Stat. 1734.)

(k) The Secretary shall not approve any project involving approaches to a bridge under this title, if such project and bridge will significantly affect the traffic volume and the highway system of a contiguous State without first taking into full consideration the views of that State. (As amended Pub. L. 93-87, title I, §§ 114, 152(2), 156, Aug. 13, 1973, 87 Stat. 257, 276, 277.)

AMENDMENTS

1973—Subsec. (g). Pub. L. 93–87, § 152(2), substituted "Act" for "Rct", thus correcting the popular name to read "Federal-Aid Highway Act of 1970".

Subsec. (i). Pub. L. 93–87, § 114, authorized promulgation of noise-level standards for highways on any Federal-aid system for which project approval has been se-

cured prior to July 1, 1972, and approval of any project on a Federal-aid system to which noise-level standards are made applicable, described the range of the projects, made money available for financing Federal share of the project, and deemed such project a highway project for all purposes of this title.

Subsec. (k). Pub. L. 93–87, § 156, added subsec. (k).

1970—Subsec. (g). Pub. L. 91–605, § 136(a), substituted provisions ordering the Secretary to issue within 30 days after Dec. 31, 1970, guidelines, which will apply to all proposed projects approved by the Secretary after their issuance, for minimizing soil erosion from highway construction for provisions authorizing the Secretary to consult with the Secretary of Agriculture respecting guidelines for minmizing soil erosion from highway construction and report such guidelines to Congress not later than July 1, 1967.

Subsecs. (h), (i), (j). Pub. L. 91–605, § 136(b), added subsecs. (h), (i), and (j).

1966—Subsec. (b). Pub. L. 89–574, § 5(a) required that in all cases the standards provide for at least four lanes of traffic.

Subsec. (g). Pub. L. 89–574, § 14, added subsec. (g).

1963—Subsec. (b). Pub. L. 88–157 substituted "Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project" for "Such standards shall be adequate to accommodate the types and volumes of traffic forecast for the year 1975", deleted "up" preceding "to such standards" and inserted "all" in the phrase "throughout all the States."

11. National Industrial Pollution Control Council

Executive Order 11523, 35 F.R. 5993

(See Ex. Order 11523 under title III *Executive Orders*)

12. Noise Control

42 U.S.C. 4901–4918

Sec.

§ 4901. Congressional findings and statement of policy.

(a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this chapter to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products. (Pub. L. 92-574, § 2, Oct. 27, 1972, 86 Stat. 1234.)

§ 4902. Definitions.

For purposes of this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "person" means an individual, corporation, partnership, or association, and (except as provided in sections 4910(e) and 4911(a) of this title) includes any officer, employee, department, agency, or instrumentality of the United States, a State, or any political subdivision of a State.

(3) The term "product" means any manufactured article or goods or component thereof; except that such term does not include—

(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 1301 of Title 49; or

(B)(i) any military weapons or equipment which are designed for combat use; (ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or (iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

(4) The term "ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.

(5) The term "new product" means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 4905 or 4907 of this title which would have been applicable to such product had it been manufactured in the United States.

(6) The term "manufacturer" means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

(7) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(8) The term "distribute in commerce" means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

(9) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term "Federal agency" means an executive agency (as defined in section 105 of Title 5) and includes the United States Postal Service.

(11) The term "environmental noise" means the intensity, duration, and the character of sounds from all sources.

(Pub. L. 92-574, § 3, Oct. 27, 1972, 86 Stat. 1234.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4903 of this title.

§ 4903. Federal programs.

(a) Furtherance of Congressional policy.

The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 4901(b) of this title.

(b) Presidential authority to exempt activities or facilities from compliance requirements.

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the emission of noise,

shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption, other than for those products referred to in section 4902(3)(b) of this title, may be granted from the requirements of sections 4905, 4916, and 4917 of this title. No such exemption shall be granted due to lack of appropriation unless the President

shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c) Coordination of programs of Federal agencies; standards and regulations; status reports.

(1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 1431 of Title 49 shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise research and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control noise. (Pub. L. 92–574, § 4, Oct. 27, 1972, 86 Stat. 1235.)

§ 4904. Identification of major noise sources.

(a) Development and publication of criteria.

(1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of October 27, 1972, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of October 27, 1972, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) Compilation and publication of reports on noise sources and control technology.

The Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after October 27, 1972.

(c) Supplemental criteria and reports.

The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Publication in Federal Register.

Any report (or revision thereof) under subsection (b)(1) of this section identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public. (Pub. L. 92–574, § 5, Oct. 27, 1972, 86 Stat. 1236.)

§ 4905. Noise emission standards for products distributed in commerce.

(a) Proposed regulations.

(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c) of this section, for each product—

(A) which is identified (or is part of a class identified) in any report published under section 4904(b)(1) of this title as a major source of noise,

(B) for which, in his judgment, noise emission standards are feasible, and

(C) which falls in one of the following categories:

(i) Construction equipment.

(ii) Transportation equipment (including recreational vehicles and related equipment.

(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

(iv) Electrical or electronic equipment.

(2) (A) Initial proposed regulations under paragraph (1) shall be published not later than eighteen months after October 27, 1972, and shall apply to any product described in paragraph (1) which is identified (or is a part of a class identified) as a

major source of noise in any report published under section 4904(b)(1) of this title on or before the date of publication of such initial proposed regulations.

(B) In the case of any product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 4904(b)(1) of this title after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) for such product shall be proposed and published by the Administrator not later than eighteen months after such report is published.

(3) After proposed regulations respecting a product have been published under paragraph (2), the Administrator shall, unless in his judgment noise emission standards are not feasible for such product, prescribe regulations, meeting the requirements of subsection (c) of this section, for such product—

(A) not earlier than six months after publication of such proposed regulations, and

(B) not later than—

(i) twenty-four months after October 27, 1972, in the case of a product subject to proposed regulations published under paragraph (2)(A), or

(ii) in the case of any other product, twenty-four months after the publication of the report under section 4904(b)(1) of this title identifying it (or a class of products of which it is a part) as a major source of noise.

(b) Authority to publish regulations not otherwise required.

The Administrator may publish proposed regulations, meeting the requirements of subsection (c) of this section, for any product for which he is not required by subsection (a) of this section to prescribe regulations but for which, in his judgment, noise emission standards are feasible and are requisite to protect the public health and welfare. Not earlier than six months after the date of publication of such proposed regulations respecting such product, he may prescribe regulations, meeting the requirements of subsection (c) of this section, for such product.

(c) Contents of regulations; appropriate consideration of other standards; participation by interested persons; revision.

(1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 4904 of this title, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including any standards under the National Traffic and Motor Vehicle Safety Act of 1966, the Clean Air Act, and the Federal Water Pollution Control Act. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) of this section (and any revision thereof) may contain testing procedures necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

(2) After publication of any proposed regulations under this section, the Administrator shall allow interested persons an opportunity to participate in rulemaking in accordance with the first sentence of section 553(c) of Title 5.

(3) The Administrator may revise any regulation prescribed by him under this section by (A) publication of proposed revised regulations, and (B) the promulgation, not earlier than six months after the date of such publication, of regulations making the revision; except that a revision which makes only technical or clerical corrections in a regulation under this section may be promulgated earlier than six months after such date if the Administrator finds that such earlier promulgation is in the public interest.

(d) Warranty by manufacturer of conformity of product with regulations; transfer of cost obligation from manufacturer to dealer prohibited.

(1) On and after the effective date of any regulation prescribed under subsection (a) or (b) of this section, the manufacturer of each new product to which such regulation applies shall warrant to the ultimate purchaser and each subsequent purchaser that such product is designed, built, and equipped so as to conform at the time of sale with such regulation.

(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 1857j of this title.

(e) State and local regulations.

(1) No State or political subdivision thereof may adopt or enforce—

(A) with respect to any new product for which a regulation has been prescribed by the Administrator under this section, any law or regulation

which sets a limit on noise emissions from such new product and which is not identical to such regulation of the Administrator; or

(B) with respect to any component incorporated into such new product by the manufacturer of such product, any law or regulation setting a limit on noise emissions from such component when so incorporated.

(2) Subject to sections 4916 and 4917 of this title, nothing in this section precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products. (Pub. L. 92–574, § 6, Oct. 27, 1972, 86 Stat. 1237.)

§ 4906. Aircraft noise standards.

The Administrator, after consultation with appropriate Federal, State, and local agencies and interested persons, shall conduct a study of the (1) adequacy of Federal Aviation Administration flight and operational noise controls; (2) adequacy of noise emission standards on new and existing aircraft, together with recommendations on the retrofitting and phaseout of existing aircraft; (3) implications of identifying and achieving levels of cumulative noise exposure around airports; and (4) additional measures available to airport operators and local governments to control aircraft noise. He shall report on such study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committees on Commerce and Public Works of the Senate within nine months after October 27, 1972. (Pub. L. 92–574, § 7(a), Oct. 27, 1972, 86 Stat. 1239.)

CODIFICATION

Section consists of subsec. (a) of section 7 of Pub. L. 92–574. Subsecs. (b) and (c) of section 7 of Pub. L. 92–574 are classified to section 1431 and 1431 note of Title 49, Transportation.

§ 4907. Labeling.

(a) Regulations.

The Administrator shall by regulation designate any product (or class thereof)—

(1) which emits noise capable of adversely affecting the public health or welfare; or

(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.

(b) Manner of notice; form; methods and units of measurement.

For each product (or class thereof) designated under subsection (a) of this section the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner, (2) the form of the notice, and (3) the methods and units of measurement to be used. Section 4905(c)(2) of this title shall apply to the prescribing of any regulation under this section.

(c) State regulation of product labeling.

This section does not prevent any State or political subdivision thereof from regulating product labeling or information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section. (Pub. L. 92–574, § 8, Oct. 27, 1972, 86 Stat. 1241.)

§ 4908. Imports.

The Secretary of the Treasury shall, in consultation with the Administrator, issue regulations to carry out the provisions of this chapter with respect to new products imported or offered for importation. (Pub. L. 92–574, § 9, Oct. 27, 1972, 86 Stat. 1242.)

§ 4909. Prohibited acts.

(a) Except as otherwise provided in subsection (b) of this section, the following acts or the causing thereof are prohibited:

(1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4905 of this title which is applicable to such product, except in conformity with such regulation.

(2)(A) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 4905 of this title, prior to its sale or delivery to the ultimate purchaser or while it is in use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4907(b) of this title (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.

(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 4907(b) of this title, prior to sale of the product to the ultimate purchaser.

(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 4908 of this title which is applicable to such product.

(6) The failure or refusal by any person to comply with any requirement of section 4910(d) or 4912(a) of this title or regulations prescribed under section 4912(a), 4916, or 4917 of this title.

(b)(1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a) of this section, upon such terms and conditions as he may find necessary to protect the public health or welfare.

(2) Paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State. (Pub. L. 92–574, § 10, Oct. 27, 1972, 86 Stat. 1242.)

§ 4910. Enforcement.

(a) Criminal penalties.

Any person who willfully or knowingly violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(b) Separate violations.

For the purpose of this section, each day of violation of any paragraph of section 4909(a) of this title shall constitute a separate violation of that section.

(c) Actions to restrain violations.

The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violations of section 4909(a) of this title.

(d) Orders issued to protect the public health and welfare; notice; opportunity for hearing.

(1) Whenever any person is in violation of section 4909(a) of this title, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of Title 5.

(e) "Person" defined.

The term "person," as used in this section, does not include a department, agency, or instrumentality of the United States. (Pub. L. 92–574, § 11, Oct. 27, 1972, 86 Stat. 1242.)

§ 4911. Citizen suits.

(a) Authority to commence suits.

Except as provided in subsection (b) of this section, any person (other than the United States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection (e) of this section), or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this chapter which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 1431 of Title 49 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

(b) Notice.

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 1431 of Title 49) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(c) Intervention.

In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may intervene as a matter of right. In an action under this section respecting a noise control requirement under section 1431 of Title 49, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

(d) Litigation costs.

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Other common law or statutory rights of action.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

(f) "Noise control requirement" defined.

For purposes of this section, the term "noise control requirement" means paragraph (1), (2), (3), (4), or (5) of section 4909(a) of this title, or a

standard, rule, or regulation issued under section 4916 or 4917 of this title or under section 1431 of Title 49. (Pub. L. 92–574, § 12, Oct. 27, 1972, 86 Stat. 1243.)

§ 4912. Records, reports, and information.

(a) Duties of manufacturers of products.

Each manufacturer of a product to which regulations under section 4905 or 4907 of this title apply shall—

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this chapter,

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

(b) Confidential information; disclosure.

(1) All information obtained by the Administrator or his representatives pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other Federal officers or employees, in whose possession it shall remain confidential, or when relevant to the matter in controversy in any proceeding under this chapter.

(2) Nothing in this subsection shall authorize the withholding of information by the Administrator, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(c) Violations and penalties.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. (Pub. L. 92–574, § 13, Oct. 27, 1972, 86 Stat. 1244.)

§ 4913. Research, technical assistance, and public information.

In furtherance of his responsibilities under this chapter and to complement, as necessary, the noise-research programs of other Federal agencies, the Administrator is authorized to:

(1) Conduct research, and finance research by contract with any person, on the effects, measurement, and control of noise, including but not limited to—

(A) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and determination of acceptable levels of noise on the basis of such effects;

(B) development of improved methods and standards for measurement and monitoring of noise, in cooperation with the National Bureau of Standards, Department of Commerce; and

(C) determination of the most effective and practicable means of controlling noise emission.

(2) Provide technical assistance to State and local governments to facilitate their development and enforcement of ambient noise standards, including but not limited to—

(A) advice on training of noise-control personnel and on selection and operation of noise-abatement equipment; and

(B) preparation of model State or local legislation for noise control.

(3) Disseminate to the public information on the effects of noise, acceptable noise levels, and techniques for noise measurement and control.

(Pub. L. 92–574, § 14, Oct. 27, 1972, 86 Stat. 1244.)

§ 4914. Development of low-noise-emission products.

(a) Definitions.

For the purpose of this section:

(1) The term "Committee" means the Low-Noise-Emission Product Advisory Committee.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "low-noise-emission product" means any product which emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under section 4905 of this title at the time of procurement to that type of product.

(4) The term "retail price" means (A) the maximum statutory price applicable to any type of product; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

(b) Certification of products; Low-Noise-Emission Product Advisory Committee.

(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

(2) The Administrator shall certify any product—

(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection;

(B) which is a low-noise-emission product as determined by the Administrator; and

(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The

Committee shall include the Administrator or his designee, a representative of the National Bureau of Standards, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a full-time basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(4) Certification under this section shall be effective for a period of one year from the date of issuance.

(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

(B) The Administrator shall publish in the Federal Register a notice of each application received.

(C) The Administrator shall make determinations for the purpose of this section in accordance with procedures prescribed by him by regulation.

(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the product at a place designated in regulations prescribed under subparagraph (A).

(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of products presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reasons therefor.

(c) Federal procurement of low-noise-emission products.

(1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.

(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

(d) Product selection.

The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise-emission qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

(e) Waiver of statutory price limitations.

For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

(f) Tests of noise emissions from products purchased by Federal government.

The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products purchased by the Federal government. If at any time he finds that the noise-emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

(g) Authorization of appropriations.

There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out thte provisions of, this section, $1,000,000 for the fiscal year ending June 30, 1973, and $2,000,000 for each of the two succeeding fiscal years, $2,200,000 for the fiscal year ending June 30, 1976, $550,000 for the transition period of July 1, 1976, through September 30, 1976, and $2,420,000 for the fiscal year ending September 30, 1977.

(h) Promulgation of procedures.

The Administrator shall promulgate the procedures required to implement this section within one hundred and eighty days after October 27, 1972. (Pub. L. 92–574, § 15, Oct. 27, 1972, 86 Stat. 1245; amended Pub. L. 94–301, § 1, May 31, 1976, 90 Stat. 590.)

§ 4915. Judicial review.

(a) Petition for review.

A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under sections 4905, 4916, or 4917 of this title or any labeling regulation under section 4907 of this title may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation

Administration in promulgating any standard or regulation under section 1431 of Title 49 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after date if such petition is based solely on grounds arising after such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(b) Additional evidence.

If a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or Administration (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) Stay of agency action.

With respect to relief pending review of an action by either Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

(d) Subpenas.

For the purpose of obtaining information to carry out this chapter, the Administrator of the Environmental Protection Agency may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Pub. L. 92–574, § 16, Oct. 27, 1972, 86 Stat. 1247.)

§ 4916. Railroad noise emission standards.

(a) Regulations; standards; consultation with Secretary of Transportation.

(1) Within nine months after October 27, 1972, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 4905 of this title.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 4915 of this title, the Administrator shall promulgate final regulations. Such regulations may be revised, from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) Regulations to insure compliance with noise emission standards.

The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 4909, 4910, 4911, and 4915 of this title.

(c) State and local standards and controls.

(1) Subject to paragraph (2) but notwithstanding any other provision of this chapter, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after

consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) Definitions.

The terms "carrier" and "railroad" as used in this section shall have the same meaning as such terms have under section 22 of Title 45. (Pub. L. 92–574, § 17, Oct. 27, 1972, 86 Stat. 1248.)

§ 4917. Motor carrier noise emission standards.

(a) Regulations; standards; consultation with Secretary of Transportation.

(1) Within nine months after October 27, 1972, the Administrator shall publish proposed noise emission regulations for motor carriers engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of motor carriers engaged in interstate commerce which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 4905 of this title.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 4915 of this title, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) Regulations to insure compliance with noise emission standards.

The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 4909, 4910, 4911, and 4915 of this title.

(c) State and local standards and controls.

(1) Subject to paragraph (2) of this subsection but notwithstanding any other provision of this chapter, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State or political sudivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) Definitions.

For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 303(a) of Title 49. (Pub. L. 92–574, § 18, Oct. 27, 1972, 86 Stat. 1249.)

§ 4918. Authorization of appropriations.

There is authorized to be appropriated to carry out this chapter (other than section 4914 of this title) $3,000,000 for the fiscal year ending June 30, 1973; $6,000,000 for the fiscal year ending June 30, 1974; the $12,000,000 for the fiscal year ending June 30, 1975; $11,090,000 for the fiscal year ending June 30, 1976; $2,772,500 for the transition period of July 1, 1976, through September 30, 1976; and $12,199,000 for the fiscal year ending September 30, 1977; except that no part of any amount appropriated pursuant to this section or section 15 for any period after the fiscal year ending June 30, 1975, shall be available for research or development. (Pub. L. 92–574, § 19, Oct. 27, 1972, 86 Stat. 1250; amended Pub. L. 94–301, § 2, May 31, 1976, 90 Stat. 590.)

13. Occupational Noise

29 U.S.C. 651–656

Sec.

§ 651. Congressional statement of findings and declaration of purpose and policy.

The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as particable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

(Pub. L. 91-596, § 2, Dec. 29, 1970, 84 Stat. 1590)

§ 652. Definitions.

For the purposes of this chapter—

(1) The term "Secretary" mean the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this chapter.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations,

business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on December 29, 1970.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this chapter.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this chapter.

(14) The term "'Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this chapter.

(Pub. L. 91–596, § 3, Dec. 29, 1970, 84 Stat. 1591.)

§ 653. Geographic applicability; judicial enforcement; applicability to existing standards; report to Congress on duplication and coordination of Federal laws; workmen's compensation law or common law or statutory rights, duties, or liabilities of employers and employees unaffected.

(a) This chapter shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Lake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this chapter by the courts established for areas in which there are no United States district courts having jurisdiction.

(b)(1) Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 2021 of Title 42, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act, the Service Contract Act of 1965, Public Law 91–54, Act of August 9, 1969, Public Law 85–742, Act of August 23, 1958, and the National Foundation on Arts and Humanities Act are superseded on the effective date of corresponding standards, promulgated under this chapter, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this chapter shall be deemed to be occupational safety and health standards issued under this, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this chapter, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this chapter and other Federal laws.

(4) Nothing in this chapter shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment. (Pub. L. 91–596, § 4, Dec. 29, 1970, 84 Stat. 1592.)

§ 654. Duties of employers and employees.

(a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this chapter.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct. (Pub. L. 91–596, § 5, Dec. 29, 1970, 84 Stat. 1593.)

§ 655. Standards.

(a) Promulgation by Secretary of national consensus standards and established Federal standards; time for promulgation; conflicting standards.

Without regard to chapter 5 of Title 5 or to the

other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this chapter and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) Procedure for promulgation, modification, or revocation of standards.

The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this chapter, the Secretary may request the recommendations of an advisory committee appointed under section 656 of this title. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On on before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefore and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the stand-

ard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health and safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of Title 5, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.

(c) Emergency temporary standards.

(1) The Secretary shall provide, without regard to the requirements of chapter 5 of Title 5, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with subsection (b) of this section, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Variances from standards; procedure.

Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he deter-

mines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Statement of reasons for Secretary's determinations; publication in Federal Register.

Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this chapter, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Judicial review.

Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) Priority for establishment of standards.

In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards. (Pub. L. 91–596, § 6, Dec. 29, 1970, 84 Stat. 1593.)

§ 656. Administration.

(a) National Advisory Committee on Occupational Safety and Health; establishment; membership; appointment; Chairman; functions; meetings; compensation; secretarial and clerical personnel.

(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of Title 5 governing appointments in the competitive service; and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of this chapter. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of Title 5.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) Advisory committees; appointment; duties; membership; compensation; reimbursement to member's employer; meetings; availability of records; conflict of interest.

An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 655 of this title. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of Title 5. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such com-

mittee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c) Use of services, facilities, and personnel of Federal, State, and local agencies; reimbursement; employment of experts and consultants or organizations; renewal of contracts; compensation; travel expenses.

In carrying out his responsibility under this chapter, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of Title 5, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS–18 under section 5332 of Title 5, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently, while so employed.

(Pub. L. 91–596, § 7, Dec. 29, 1970, 84 Stat. 1597.)

14. Office of Noise Abatement and Control

42 U.S.C. 1858–1858a

§ 1858. Office of Noise Abatement and Control; investigation and study of noise and its effects on the public health and welfare; report and recommendations by December 31, 1971.

(a) The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after December 31, 1970.

(c) In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise. (July 14, 1955, ch. 360, title IV, § 402, as added Dec. 31, 1970, Pub. L. 91–604, § 14, 84 Stat. 1709.)

SHORT TITLE

Section 401 of act July 14, 1955, as added Dec. 31, 1970, Pub. L. 91–604, § 14, 84 Stat. 1709, provided that: "This title [this subchapter] may be cited as the 'Noise Pollution and Abatement Act of 1970'."

§ 1858a. Authorization of appropriations.

There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this subchapter. (July 14, 1955, ch. 360, title IV, § 403, as added Dec. 31, 1970, Pub. L. 91–604, § 14, 84 Stat. 1710.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1857*l* of this title.

15. Prevention, Control and Abatement of Air and Water Pollution at Federal Facilities

Ex. Order 11507

(See Ex. Order 11507 under title IV *Executive Orders*)

TITLE II—ENVIRONMENT, GENERALLY

1. Aviation Facilities Expansion and Improvement

49 U.S.C. 1701–1742

SUBCHAPTER I.—GENERAL PROVISIONS

SUBCHAPTER II.—AIRPORT AND AIRWAY DEVELOPMENT

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

SUBCHAPTER I.—GENERAL PROVISIONS

§ 1701. Congressional declaration of policy.

The Congress hereby finds and declares—

That the Nation's airport and airway system is inadequate to meet the current and projected growth in aviation.

That substantial expansion and improvement of the airport and airway system is required to meet the demands of interstate commerce, the postal service, and the national defense.

That the annual obligational authority during the period July 1, 1970, through September 30, 1980, for the acquisition, establishment, and improvement of air navigational facilities under the Federal Aviation Act of 1958, should be no less than $250,000,000. (Pub. L. 91–258, title I, § 2, May 21, 1970, 84 Stat. 219; amended Pub. L. 94–353, § 2, July 12, 1976, 90 Stat. 871.)

§ 1702. National transportation policy.

(a) Formulation.

Within one year after May 21, 1970, the Secretary of Transportation shall formulate and recommend to the Congress for approval a national transportation policy. In the formulation of such policy, the Secretary shall take into consideration, among other things—

(1) the coordinated development and improvement of all modes of transportation, together with the priority which shall be assigned to the development and improvement of each mode of transportation; and

(2) the coordination of recommendations made under this chapter relating to airport and airway development with all other recommendations to the Congress for the development and improvement of our national transportation system.

(b) Annual report.

The Secretary shall submit an annual report to the Congress on the implementation of the national transportation policy formulated under subsection (a) of this section. Such report shall include the specific actions taken by the Secretary with respect to (1) the coordination of the development and improvement of all modes of transportation, (2) the establishment of priorities with respect to the development and improvement of each mode of transportation, and (3) the coordination of recommendations under this chapter relating to airport and airway development with all other recommendations to the Congress for the development and improvement of our national transportation system. (Pub. L. 91–258, title I, § 3, May 21, 1970, 84 Stat. 219.)

§ 1703. Cost allocation study.

The Secretary of Transportation shall conduct a study respecting the appropriate method for allocating the cost of the airport and airway system among the various users, and shall identify the cost to the Federal Government that should appropriately be charged to the system and the value to be assigned to any general public benefit, including military, which may be determined to exist. In conducting the study the Secretary shall consult fully with and give careful consideration to the views of the users of the system. The Secretary shall report the results of the study to Congress within two years from May 21, 1970. (Pub. L. 91–258, title I, § 4, May 21, 1970, 84 Stat. 220.)

SUBCHAPTER II.—AIRPORT AND AIRWAY DEVELOPMENT

§ 1711. Definitions.

As used in this subchapter—

(1) "Air carrier airport" means an existing public airport regularly served, or a new public airport which the Secretary determines will be regularly served, by an air carrier certificated by the Civil Aeronautics Board under section 401 of the Federal Aviation Act of 1958 (other than a supplemental air carrier), and a commuter service airport.

(2) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(3) "Airport development" means (A) any work involved in construction, improving, or repairing a public airport or portion thereof, including the removal, lowering, relocation, and marking and lighting of airport hazards, and including navigation aids used by aircraft landing at, or taking off from, a public airport, and including safety equipment required by rule or regulation for certification of the airport under section 1432 of this title, and security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport, and including snow removal equipment, and including the purchase of noise suppressing equipment, the construction of physical barriers, and landscaping for the purpose of diminishing the effect of aircraft noise on any area adjacent to a public airport, (B) any acquisition of land or of any interest therein, or of any easement through or other interest in airspace, including land for future airport development, which is necessary to permit any such work or to remove or mitigate or prevent or limit the establishment of, airport hazards, and (C) any acquisition of land or of any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport.

(4) "Airport hazard" means any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land near such airport, which obstructs the airspace required for the flight of aircraft in landing or taking off at such airport or is otherwise hazardous to such landing or taking off of aircraft.

(5) "Airport master planning" means the development for planning purposes of information and guidance to determine the extent, type, and nature of development needed at a specific airport. It may include the preparation of an airport layout plan

and feasibility studies including the potential use and development of land surrounding an actual or potential airport site, and the conduct of such other studies, surveys, and planning actions as may be necessary to determine the short-, intermediate-, and long-range aeronautical demands required to be met by a particular airport as a part of a system of airports.

(6) "Airport system planning" means the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area to establish a viable and balanced system of public airports. It includes identification of the specific aeronautical role of each airport within the system, development of estimates of systemwide development costs, and the conduct of such studies, surveys, and other planning actions as may be necessary to determine the short-, intermediate-, and long-range aeronautical demands required to be met by a particular system of airports.

(7) "Commuter service airport" means an air carrier airport which is not served by an air carrier certificated under section 401 of the Federal Aviation Act of 1958 and which is regularly served by one or more air carriers operating under exemption granted by the Civil Aeronautics Board from section 401(a) of the Federal Aviation Act of 1958 at which not less than two thousand five hundred passengers were enplaned in the aggregate by all such air carriers from such airport during the preceding calendar year.

(8) "General aviation airport" means a public airport which is not an air carrier airport.

(9) "Landing area" means that area used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft.

(10) "Government aircraft" means aircraft owned and operated by the United States.

(11) "Planning agency" means any planning agency designated by the Secretary which is authorized by the laws of the State or States (including the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam) or political subdivisions concerned to engage in areawide planning for the areas in which assistance under this subchapter is to be used.

(12) "Project" means a project for the accomplishment of airport development, airport master planning, or airport system planning.

(13) "Project costs" means any costs involved in accomplishing a project.

(14) "Public agency" means a State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam or any agency of any of them; a municipality or other political subdivision; or a tax-supported organization; or an Indian tribe or pueblo.

(15) "Public airport" means any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned.

(16) "Reliever airport" means a general aviation airport designated by the Secretary as having the primary function of relieving congestion at an air carrier airport by diverting from such airport general aviation traffic.

(17) "Secretary" means the Secretary of Transportation.

(18) "Sponsor" means any public agency which, either individually or jointly with one or more other public agencies, submits to the Secretary, in accordance with this subchapter, an application for financial assistance.

(19) "State" means a State of the United States or the District of Columbia.

(20) "Terminal area" means that area used or intended to be used for such facilities as terminal and cargo buildings, gates, hangars, shops, and other service buildings; automobile parking, airport motels, and restaurants, and garages and automobile service facilities used in connection with the airport; and entrance and service roads used by the public within the boundaries of the airport.

(21) "United States share" means that portion of the project costs of projects for airport development approved pursuant to section 1716 of this title which is to be paid from funds made available for the purposes of this subchapter. (Pub. L. 91–258, title I, § 11, May 21, 1970, 84 Stat. 220.)

(As amended Pub. L. 92–174, § 4(a), Nov. 27, 1971, 85 Stat. 492; Pub. L. 93–44, § 2, June 18, 1973, 87 Stat. 88; Pub. L. 94–353, § 3, July 12, 1976, 90 Stat. 871.)

AMENDMENTS

1973—Par. (2). Pub. L. 93–44 defined "airport development" to include work involved in constructing, improving, or repairing security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport.

1971—Pars. (8), (11). Pub. L. 92–174 inserted references to American Samoa and the Trust Territory of the Pacific Islands.

§ 1712. National airport system plan.

(a) Formulation.

The Secretary is directed to prepare and publish, within three years after May 21, 1970, and thereafter to review and revise as necessary, a national airport system plan for the development of public airports in the United States. The plan shall set forth, for at least a ten-year period, the type and estimated cost of airport development considered by the Secretary to be necessary to provide a system of public airports adequate to anticipate and meet the needs of civil aeronautics, to meet requirements in support of the national defense as determined by the Secretary of Defense, and to meet the special needs of the postal service. The plan shall include all types of airport development eligible for Federal aid under section 1714 of this title and terminal area development considered necessary to provide for the efficient accommodation of persons and goods at public airports, and the conduct of functions in operational support of the airport. Airport development identified by the plan shall not be limited to the requirements of any

classes or categories of public airports. In preparing the plan, the Secretary shall consider the needs of all segments of civil aviation. After June 30, 1975, the Secretary shall not include in the national airport system plan any airport which is not eligible for airport development grants under the next to the last sentence of section 1716(a) of this title, except that nothing in this sentence shall require the Secretary to remove from the national airport system plan any airport in such plan on June 30, 1975.

(b) Consideration of other modes of transportation.

In formulating and revising the plan, the Secretary shall take into consideration, among other things, the relationship of each airport to the rest of the transportation system in the particular area, to the forecasted technological developments in aeronautics, and to developments forecasted in other modes of intercity transportation.

(c) Federal, State, and other agencies.

In developing the national airport system plan, the Secretary shall to the extent feasible consult with the Civil Aeronautics Board, the Post Office Department, the Department of the Interior regarding conservation and natural resource values, and other Federal agencies, as appropriate; with planning agencies, and airport operators; and with air carriers, aircraft manufacturers, and others in the aviation industry. The Secretary shall provide technical guidance to agencies engaged in the conduct of airport system planning and airport master planning to insure that the national airport system plan reflects the product of interstate, State, and local airport planning.

(d) Cooperation with Federal Communications Commission.

The Secretary shall, to the extent possible, consult, and give consideration to the views and recommendations of the Federal Communications Commission, and shall make all reasonable efforts to cooperate with that Commission for the purpose of eliminating, preventing, or minimizing airport hazards caused by the construction or operation of any radio or television station. In carrying out this section, the Secretary may make any necessary surveys, studies, examinations, and investigations.

(e) Consultation with Department of Defense.

The Department of Defense shall make military airports and airport facilities available for civil use to the extent feasible. In advising the Secretary of national defense requirements pursuant to subsection (a) of this section, the Secretary of Defense shall indicate the extent to which military airports and airport facilities will be available for civil use.

(f) Consultation concerning environmental changes.

In carryng out this section, the Secretary shall consult with and consider the views and recommendations of the Secretary of the Interior, the Secretary of Health, Education, and Welfare, the Secretary of Agriculture, and the National Council on Environmental Quality. The recommendations of the Secretary of the Interior, the Secretary of Health, Education, and Welfare, the Secretary of Agriculture, and the National Council on Environmental Quality, with regard to the preservation of environmental quality, shall, to the extent that the Secretary of Transportation determines to be feasible, be incorporated in the national airport system plan.

(g) Cooperation with Federal Power Commission.

The Secretary shall, to the extent possible, consult, and give consideration to the views and recommendations of the Federal Power Commission, and shall make all reasonable efforts to cooperate with that Commission for the purpose of eliminating, preventing, or minimizing airport hazards caused by the construction or operation of power facilities. In carrying out this section, the Secretary may make any necessary surveys, studies, examinations, and investigations.

(h) Aviation Advisory Commission; establishment; membership; duties; compensation and travel expenses; personnel, experts, and consultants; administrative services; information, assistance, and cooperation of Governmental agencies; report to President and Congress; termination; appropriation.

(1) There is established an Aviation Advisory Commission (hereafter in this subsection referred to as the "Commission"). The Commission shall be composed of nine members appointed by the President from private life as follows:

(A) One person to serve as Chairman of the Commission who is specially qualified to serve as Chairman by virtue of his education, training, or experience.

(B) Eight persons who are specially qualified to serve on such Commission from among representatives of the commercial air carriers, general aviation, aircraft manufacturers, airport sponsors, State aeronautics agencies, and three major organizations concerned with conservation or regional planning.

Not more than five members of the Commission shall be from the same political party. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made, and subject to the same limitations with respect to party affiliations. Five members shall constitute a quorum.

(2) It shall be the duty of the Commission—

(A) to formulate recommendations concerning the long-range needs of aviation, including but not limited to, future airport requirements and the national airport system plan described in subsection (a) of this section, and recommendations concerning surrounding land uses, ground access, airways, air service, and aircraft compatible with such plan;

(B) to facilitate consideration of other modes of transportation and cooperation with other agencies and community and industry groups as provided in subsections (b) through (g) of this section.

In carrying out its duties under this subsection, the Commission shall establish such task forces as are necessary to include technical representation from the organizations referred to in this subsection, from Federal agencies, and from such other organizations

and agencies as the Commission considers appropriate.

(3) Each member of the Commission shall, while serving on the business of the Commission, be entitled to receive compensation at a rate fixed by the President, but not exceeding $100 per day, including travel time; and, while so serving away from his home or regular place of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(4)(A) The Commission is authorized, without regard to the provisions of Title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates, to appoint and fix the compensation of such personnel as may be necessary to carry out the functions of the Commission, but no individual so appointed shall receive compensation in excess of the rate authorized for GS–18 by section 5332 of such title.

(B) The Commission is authorized to obtain the services of experts and consultants in accordance with the provisions of section 3109 of Title 5, but at rates for individuals not to exceed $100 per diem.

(C) Administrative services shall be provided the Commission by the General Services Administration on a reimbursable basis.

(D) The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance it deems necessary to carry out its functions under this subsection; and each such department, agency, and instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information and assistance to the Commission upon request made by the Chairman.

(5) The Commission shall submit to the President and to the Congress, on or before January 1, 1973, a final report containing the recommendations formulated by it under this subsection. The Commission shall cease to exist 60 days after the date of the submission of its final report.

(6) There are authorized to be appropriated from the Airport and Airway Trust Fund such sums, not to exceed $2,000,000, as may be necessary to carry out the provisions of this subsection.

(i) Revised system plan.

No later than January 1, 1978, the Secretary shall consult with the Civil Aeronautics Board and with each State and airport sponsor, and, in accordance with this section, prepare and publish a revised national airport system plan for the development of public airports in the United States. Estimated costs contained in such revised plan shall be sufficiently accurate so as to be capable of being used for future year apportionments. In addition to the information required by subsection (a), the revised plan shall include an identification of the levels of public service and the uses made of each public airport in the plan, and the projected airport development which the Secretary deems necessary to fulfill the levels of service and use of such airports during the succeeding ten-year period. (Pub. L. 91–258, title I, § 12, May 21, 1970, 84 Stat. 221.) (As amended Pub. L. 92–174, § 1, Nov. 27, 1971, 85 Stat. 491; Pub. L. 93–44, § 6, June 18, 1973, 87 Stat. 90; Pub. L. 94–353, § 4, § 8, July 12, 1976, 90 Stat. 872.)

AMENDMENTS

1976—Subsec. (i). Pub. L. 94–353, § 4, added this subsection.

Subsec. (a). Pub. L. 94–353, § 8, added the last sentence.

1973—Subsec. (a). Pub. L. 93–44 substituted requirement that national airport system plan be published within three years after May 21, 1970, for prior two year requirement.

1971—Subsec. (h)(5). Pub. L. 92–174 substituted "January 1, 1973" for "January 1, 1972".

TERMINATION OF ADVISORY COMMISSIONS

Advisory Commissions in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a Commission established by the President or an officer of the Federal Government, such Commission is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Commission established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1713. Planning grants.

(a) Authorization to make grants.

In order to promote the effective location and development of airports and the development of an adequate national airport system plan, the Secretary may make grants of funds to planning agencies for airport system planning, and to public agencies for airport master planning.

(b) Amount and limitation of grants.

The award of grants under subsection (a) of this section is subject to the following limitations:

(1) The total funds obligated for grants under this section may not exceed $150,000,000 and the amount obligated in any one fiscal year may not exceed $15,000,000.

(2) The United States share of any airport master planning grant under this section shall be that per centum for which a project for airport development at that airport would be eligible under section 17 of this Act. In the case of any airport system planning grant under this section, the United States share shall be 75 per centum.

(3) No more than 10 per centum of the funds made available under this section in any fiscal year may be allocated for projects within a single State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam. Grants for projects encompassing an area located in two or more States shall be charged to each State in the proportion which the number of square miles the project encompasses in each State bears to the square miles encompassed by the entire project.

(c) Regulations; coordination with Secretary of Housing and Urban Development.

The Secretary may prescribe such regulations as he deems necessary governing the award and administration of grants authorized by this section. The Secretary and the Secretary of Housing and Urban Development shall develop jointly procedures designed to preclude duplication of their respective planning assistance activities and to ensure that such activities are effectively coordinated. (Pub. L. 91–258, title I, § 13, May 21, 1970, 84 Stat. 224.)

(As amended Pub. L. 92–174, § 4(a), Nov. 27, 1971, 85 Stat. 492; Pub. L. 94–353, § 5, July 12, 1976, 90 Stat. 872.)

AMENDMENTS

1976—Subsec. (b)(1). Pub. L. 94–353 substituted "limitation" for "apportionment" in the side heading and "$150,000,000" for "$75,000,000".

Subsec. (b)(2). Pub. L. 94–353 substantially revised this subsection.

Subsec. (b)(3). Pub. L. 94–353 substituted "10" for "7.5".

1971—Subsec. (b)(3). Pub. L. 92–174 inserted reference to American Samoa and the Trust Territory of the Pacific Islands.

§ 1714. Airport and airway development program.

(a) General authority.

In order to bring about, in conformity with the national airport system plan, the establishment of a nationwide system of public airports adequate to meet the present and future needs of civil aeronautics, the Secretary is authorized to make grants for airport development by grant agreements with sponsors in aggregate amounts not less than the following:

(1) For the purpose of developing in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, airports served by air carriers certificated by the Civil Aeronautics Board, and airports the primary purpose of which is to serve general aviation and to relieve congestion at airports having a high density of traffic serving other segments of aviation, $250,000,000 for each of the fiscal years 1971 through 1973, and $275,000,000 for each of the fiscal years 1974 and 1975.

(2) For the purpose of developing in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, airports serving segments of aviation other than air carriers certificated by the Civil Aeronautics Board, $30,000,000 for each of the fiscal years 1971 through 1973, and $35,000,000 for each of the fiscal years, 1974 and 1975.

(3) For the purpose of developing air carrier airports in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, $435,000,000 for fiscal year 1976, including the period July 1, 1976, through September 30 1976, $440,000,000 for fiscal year 1977, $465,000,000 for fiscal year 1978, $495,000,000 for fiscal year 1979, and $525,000,000 for fiscal year 1980.

(4) For the purpose of developing general aviation airports in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, $65,000,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, $70,000,000 for fiscal year 1977, $75,000,000 for fiscal year 1978, $80,000,000 for fiscal year 1979, and $85,000,000 for fiscal year 1980.

(b) Obligational authority.

(1) To facilitate orderly long-term planning by sponsors, the Secretary is authorized, effective on May 21, 1970, to incur obligations to make grants for airport development from funds made available under this subchapter for the fiscal year ending June 30, 1971, and the succeeding four fiscal years in a total amount not to exceed $1,460,000,000. No obligation shall be incurred under this paragraph for a period of more than three fiscal years and no such obligation shall be incurred after June 30, 1975. The Secretary shall not incur more than one obligation under this paragraph with respect to any single project for airport development. Obligations incurred under this paragraph shall not be liquidated

in an aggregate amount exceeding $280,000,000 prior to June 30, 1971, an aggregate amount exceeding $560,000,000 prior to June 30, 1972, an aggregate amount exceeding $840,000,000 prior to June 30, 1973, an aggregate amount exceeding $1,150,000,000 prior to June 30, 1974, and an aggregate amount exceeding $1,460,000,000 prior to June 30, 1975.

(2) The Secretary is authorized to incur obligations to make grants for airport development from funds made available under paragraphs (3) and (4) of subsection (a) of this section, and such authority shall exist with respect to funds available for the making of grants for any fiscal year or part thereof pursuant to subsection (a) immediately after such funds are apportioned pursuant to section 1715(a) of this title. No obligation shall be incurred under this paragraph after September 30, 1980. The Secretary shall not incur more than one obligation under this paragraph with respect to any single project for airport development. Notwithstanding any other provision of this title, no part of any of the funds authorized, or authorized to be obligated, for fiscal year 1980 at the discretion of the Secretary under paragraphs (3)(B) and (4)(C) of section 1715(a), and no part of the discretionary funds for reliever airports under such paragraph (4), shall be obligated or otherwise expended except in accordance with a statute enacted after the date of enactment of this sentence.

(c) Airway facilities.

For the purpose of acquiring, establishing, and improving air navigation facilities under section 1348(b) of this title, the Secretary is authorized, within the limits established in appropriations Acts, to obligate for expenditure not less than $250,000,000 for each of the fiscal years 1971

through 1975, not less than $312,500,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and not less than $250,000,000 per fiscal year for the fiscal years 1977 through 1980.

(d) Research, development, and demonstrations.

The Secretary is authorized to carry out under section 1353 of this title such demonstration projects as he determines necessary in connection with research and development activities under such section 1353. For research, development, and demonstration projects and activities under such section 1353, there is authorized to be appropriated from the Trust Fund in the amount of $109,350,000 for the fiscal year 1976, including the interim period beginning July 1, 1976, and ending September 30, 1976, $85,400,000 for the fiscal year 1977, and not less than $50,000,000 per fiscal year for fiscal years 1978 through 1980, to remain available until expended. The initial $50,000,000 of any sums appropriated to the Trust Fund pursuant to subsection (d) of section 1742 of this title shall be allocated to such research, development, and demonstration activities.

(e) Other expenses.

The balance of the moneys available in the Airport and Airways Trust Fund may be appropriated for (1) costs of services provided under international agreements relating to the joint financing of air navigation services which are assessed against the United States Government, and (2) direct costs incurred by the Secretary to flight check and maintain air navigation facilities referred to in subsection (c) of this section in a safe and efficient condition. Eligible maintenance expenses are limited to costs incurred in the field and exclude the costs of engineering support and planning, direction, and evaluation activities. The amounts appropriated from the Airport and Airway Trust Fund for the purposes of clauses (1) and (2) may not exceed $250,000,000 for fiscal year 1977, $275,000,000 for fiscal year 1978, $300,000,000 for fiscal year 1979, and $325,000,000 for fiscal year 1980. The amounts appropriated in any fiscal year under this subsection may not exceed, when added to the minimum amounts authorized for that year under subsections (a), (c), and (d) of this section, the amounts transferred to the Airport and Airway Trust Fund for that year under subsection 208(b) of the Airport and Airway Revenue Act of 1970. No part of the amount appropriated from the Airport and Airway Trust Fund in any fiscal year for obligation or expenditure under clause (2) of this subsection shall be obligated or expended which exceeds that amount which bears the same ratio to the maximum amount which may be appropriated under clauses (1) and (2) of this subsection for such fiscal year as the total amount obligated in that fiscal year under paragraphs (3) and (4) of subsection (a) of this section bears to the aggregate of the minimum amount made available for obligation under each such paragraph for such fiscal year.

(f) Preservation of funds and priority for airport and airway programs.

(1) Notwithstanding any other provision of law to the contrary, no amounts may be appropriated from the trust fund to carry out any program or activity under the Federal Aviation Act of 1958, except programs or activities referred to in this section.

(2) Amounts equal to the minimum amounts authorized for each fiscal year by subsections (a), (c), (d) and the third sentence of subsection (e) of this section shall remain available in the trust fund until appropriated for the purposes described in such subsections.

(3) No amounts transferred to the trust fund by subsection (b) of section 1742 of this title (relating to aviation user taxes) may be appropriated for any fiscal year to carry out administrative expenses of the Department of Transportation or of any unit thereof except to the extent authorized by subsection (e) of this section. (As amended Pub. L. 92–174, §§ 2, 3, 4(b), Nov. 27, 1971, 85 Stat. 491, 492; Pub. L. 93–44, § 3, June 18, 1973, 87 Stat. 89; Pub. L. 94–353, § 6 and § 201, July 12, 1976, 90 Stat. 872.)

AMENDMENTS

1973—Subsec. (a)(1). Pub. L. 93–44, § 3(a)(1), increased authorization of appropriations for fiscal years 1974 and 1975 from $250,000,000 to $275,000,000.

Subsec. (a)(2). Pub. L. 93–44, § 3(a)(2), increased authorization of appropriations for fiscal years 1974 and 1975 from $30,000,000 to $35,000,000.

Subsec. (b). Pub. L. 93–44, § 3(b), substituted $1,460,000,000" for "$840,000,000" in first sentence, substituted "be incurred after" for "extend beyond" in second sentence, and limited (in last sentence) liquidation of obligations in an aggregate amount not exceeding $1,150,000,000 prior to June 30, 1974, and $1,460,000,000 prior to June 30, 1975.

1971—Subsec. (a). Pub. L. 92–174, § 4(b), added references to American Samoa and the Trust Territory of the Pacific Islands.

Subsec. (d). Pub. L. 92–174, § 2, substituted reference to moneys covering administrative expenses incident to the administration of programs for which funds are to be allocated as set forth in subsection (c) of this section, for reference to moneys covering the maintenance and operation of air navigation facilities and the conduct of other functions under section 1348(b) of this title not otherwise provided for in subsection (c) of this section.

Subsec. (e). Pub. L. 92–174, § 3, added subsec. (e).

§ 1715. Distribution of funds; State apportionment.

(a) Apportionment of funds; discretionary fund addition from unexpended amounts; passengers enplaned.

(1) As soon as possible after July 1 of each fiscal year for which any amount is authorized to be obligated for the purposes of paragraph (1) of section 1714(a) of this title, the amount made available for that year shall be apportioned by the Secretary as follows:

(A) One-third to be distributed as follows:

(i) 97 per centum of such one-third for the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States.

(ii) 3 per centum of such one-third for Hawaii, the Commonwealth of Puerto Rico,

Guam, and the Virgin Islands, to be distributed in shares of 35 per centum, 35 per centum, 15 per centum, and 15 per centum, respectively.

(B) One-third to be distributed to sponsors of airports served by air carriers certificated by the Civil Aeronautics Board in the same ratio as the number of passengers enplaned at each airport of the sponsor bears to the total number of passengers enplaned at all such airports.

(C) One-third to be distributed at the discretion of the Secretary.

(2) As soon as possible after July 1 of each fiscal year for which any amount is authorized to be obligated for the purposes of paragraph (2) of section 1714(a) of this title, the amount made available for that year shall be apportioned by the Secretary as follows:

(A) Seventy-three and one-half per centum for the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States.

(B) One and one-half per centum for Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, to be distributed in shares of 35 per centum, 35 per centum, 15 per centum, and 15 per centum, respectively.

(C) Twenty-five per centum to be distributed at the discretion of the Secretary.

(3) As soon as possible after the date of enactment of this paragraph for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and on the first day of each fiscal year which begins on or after October 1, 1976, for which any amount is authorized to be obligated for the purposes of paragraph (3) of section 1714(a) of this part, the amount made available for that year shall be apportioned by the Secretary as follows:

(A) to each sponsor of an air carrier airport (other than a commuter service airport) as follows:

(i) $6.00 for each of the first fifty thousand passengers enplaned at that airport.

(ii) $4.00 for each of the next fifty thousand passengers enplaned at that airport.

(iii) $2.00 for each of the next four hundred thousand passengers enplaned at that airport.

(iv) $0.50 for each passenger enplaned at that airport over five hundred thousand.

No air carrier airport (other than a commuter service airport)—

(I) served by air carrier aircraft heavier than 12,500 pounds maximum certificated gross takeoff weight, or previously served, on or after September 30, 1968, by air carrier aircraft heavier than 12,500 pounds maximum certificated gross takeoff weight and presently served by air carrier aircraft 12,500 pounds or less maximum certificated gross takeoff weight, shall receive under this subparagraph less than $187,500 or more than $12,500,000 for fiscal year 1976, including the period July 1, 1976 through September 30, 1976, and less than $150,000 or more than $10,000,000 per fiscal year for fiscal years 1977 through 1980; and

(II) served by air carrier aircraft 12,500 pounds or less maximum certificated gross takeoff weight which, since September 29, 1968, has never been regularly served by air carrier aircraft heavier than 12,500 pounds maximum certificated gross takeoff weight shall receive under this subparagraph less than $62,500 or more than $12,500,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and less than $50,000 or more than $10,000,000 per fiscal year for fiscal years 1977 through 1980.

In no event shall the total amount of all apportionments under this subparagraph (A) for any fiscal year exceed two-thirds of the amount authorized to be obligated for the purposes of paragraph (3) of section 1714(a) of this part for such fiscal year. In any case in which an apportionment would be reduced by the preceding sentence, the Secretary shall for such fiscal year reduce the apportionment to each sponsor of an air carrier airport proportionately so that such two-thirds amount is achieved.

(B) Any amount not apportioned under subparagraph (A) of this paragraph shall be distributed at the discretion of the Secretary as follows:

(i) $18,750,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and $15,000,000 per fiscal year for the fiscal years 1977 through 1980, to commuter service airports.

(ii) The remainder of such amount to air carrier airports.

(4) As soon as possible after the date of enactment of this paragraph for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and on the first day of each fiscal year which begins on or after October 1, 1976, for which any amount is authorized to be obligated for the purposes of paragraph (4) of section 1714(a) of this part, the amount made available minus $18,750,000 in the case of fiscal year 1976, including such period, and minus $15,000,000 in the case of each of the fiscal years 1977 through 1980, shall be apportioned by the Secretary as follows:

(A) 75 per centum for the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States.

(B) 1 per centum for the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands to be distributed at the discretion of the Secretary.

(C) 24 per centum to be distributed at the discretion of the Secretary to general aviation airports.

$18,750,000 of the amount made available for fiscal year 1976, including such period, and $15,000,000 of the amount made available for each of the other fiscal years shall be distributed at the discretion of the Secretary to reliever airports.

(5) Each amount apportioned to a State under paragraph (1)(A)(i) or (2)(A) or (4)(A) of this subsection shall, during the fiscal year for which it was first authorized to be obligated and the fiscal year immediately following, be available only for approved airport development projects located in that State, or sponsored by that State or some public agency thereof but located in an adjoining State. Each amount apportioned to a sponsor of an airport under paragraph (1)(B) or (3)(A) of this subsection shall, during the fiscal year for which it was first authorized to be obligated and the two fiscal years immediately following, be available only for approved airport development projects located at airports sponsored by it. Any amount apportioned as described in this paragraph which has not been obligated by grant agreement at the expiration of the period of time for which it was so apportioned shall be added to the discretionary fund established by subsection (b) of this section. For purposes of this paragraph funds apportioned pursuant to this section for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, shall be available for obligation for the same period of time as if such funds were apportioned for fiscal year 1976 exclusive of such period.

(6) For the purposes of this section, the term "passengers enplaned" shall include United States domestic, territorial, and international revenue passenger enplanements in scheduled and nonscheduled service of air carriers and foreign air carriers in intrastate and interstate commerce as shall be determined by the Secretary pursuant to such regulations as he shall prescribe.

(b) Discretionary fund; creation and uses.

(1) The amounts authorized by subsection (a) of this section to be distributed at the discretion of the Secretary shall constitute a discretionary fund.

(2) The discretionary fund shall be available for such approved projects for airport development in the several States, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam as the Secretary considers most appropriate for carrying out the national airport system plan regardless of the location of the projects. In determining the projects for which the fund is to be used, the Secretary shall consider the existing airport facilities in the several States, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam, and the need for or lack of development of airport facilities in the several States, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam. Amounts placed in the discretionary fund pursuant to subsection (a) of this section, including amounts added to the discretionary fund pursuant to paragraph (5) of such subsection (a), may be used only in accordance with the purposes for which originally appropriated.

(c) Notice of apportionment; definitions.

The Secretary shall inform each air carrier airport sponsor and the Governor of each State, or the chief executive officer of the equivalent jurisdiction, as the case may be, on April 1 of each year of the estimated amount of the apportionment to be made on October 1 of that year.

As used in this section, the term "population" means the population according to the latest decennial census of the United States and the term "area" includes both land and water. (Pub. L. 91–258, title I, § 15, May 21, 1970, 84 State. 225.)
(As amended Pub. L. 92–174, § 4(a), Nov. 27, 1971, 85 Stat. 492; Pub. L. 94–353, § 7, July 12, 1976, 90 Stat. 874.)

AMENDMENTS

1971—Subsec. (b)(2). Pub. L. 92–174 inserted reference to American Samoa and the Trust Territory of the Pacific Islands.

INCREASE IN ENPLANEMENTS

Pub. L. 94–353, § 7(e), provided that:
"In making the apportionment for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, under section 1715(a)(3)(A) of the Airport and Airway Development Act of 1970, the Secretary of Transportation shall increase the number of enplanements at each airport by 25 percent."

§ 1716. Project applications for airport development.
(a) Submission.

Subject to the provisions of subsection (b) of this section, any public agency, or two or more public agencies acting jointly, may submit to the Secretary a project application for one or more projects in a form and containing such information, as the Secretary may prescribe, setting forth the airport development proposed to be undertaken. Until July 1, 1975, no project application shall propose airport development other than that included in the then current revision of the national airport system plan formulated by the Secretary under this subchapter, and all proposed development shall be in accordance with standards established by the Secretary, including standards for site location, airport layout, grading, drainage, seeding, paving, lighting, and safety of approaches. After June 30, 1975, no project application shall propose airport development except in connection with the following airports included in the current revision of the national airport system plan formulated by the Secretary under section 1712 of this title: (1) air carrier airports, (2) commuter service airports, (3) reliever airports, and (4) general aviation airports (A) which are regularly served by aircraft transporting United States mail, or (B) which are regularly used by aircraft of a unit of the Air National Guard or of a Reserve component of the Armed Forces of the United States, or (C) which the Secretary determines have a significant national interest. Except as provided in subsection (g), all proposed development shall be in accord-

ance with standards established by the Secretary, including standards for site location, airport layout, grading, drainage, seeding, paving, lighting, and safety of approaches.

(b) Public agencies subject to State law.

Nothing in this subchapter shall authorize the submission of a project application by any municipality or other public agency which is subject to the law of any State if the submission of the project application by the municipality or other public agency is prohibited by the law of that State.

(c) Approval.

(1) All airport development projects shall be subject to the approval of the Secretary, which approval may be given only if he is satisfied that—

(A) the project is reasonably consistent with plans (existing at the time of approval of the project) of planning agencies for the development of the area in which the airport is located and will contribute to the accomplishment of the purposes of this subchapter;

(B) sufficient funds are available for that portion of the project costs which are not to be paid by the United States under this subchapter;

(C) the project will be completed without undue delay;

(D) the public agency or public agencies which submitted the project application have legal authority to engage in the airport development as proposed; and

(E) all project sponsorship requirements prescribed by or under the authority of this subchapter have been or will be met.

No airport development project may be approved by the Secretary with respect to any airport unless a public agency or the United States or an agency thereof holds good title, satisfactory to the Secretary, to the landing area of the airport or the site therefor, or gives assurance satisfactory to the Secretary that good title will be acquired.

(2) No airport development project may be approved by the Secretary which does not include provision for installation of the landing aids specified in subsection (d) of section 1717 of this title and determined by him to be required for the safe and efficient use of he airport by aircraft taking into account the category of the airport and the type and volume of traffic utilizing the airport.

(3) No airport development project may be approved by the Secretary unless he is satisfied that fair consideration has been given to the interest of communities in or near which the project may be located.

(4) It is declared to be national policy that airport development projects authorized pursuant to this subchapter shall provide for the protection and enhancement of the natural resources and the quality of environment of the Nation. In implementing this policy, the Secretary shall consult with the Secretaries of the Interior and Health, Education, and Welfare with regard to the effect that any project involving airport location, a major runway extension, or runway location may have on natural resources including, but not limited to, fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment, and shall authorize no such project found to have adverse effect unless the Secretary shall render a finding, in writing, following a full and complete review, which shall be a matter of public record, that no feasible and prudent alternative exists and that all possible steps have been taken to minimize such adverse effect.

(d) Hearings.

(1) No airport development project involving the location of an airport, an airport runway, or a runway extension may be approved by the Secretary unless the public agency sponsoring the project certifies to the Secretary that there has been afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport location and its consistency with the goals and objectives of such urban planning as has been carried out by the community.

(2) When hearings are held under paragraph (1) of this subsection, the project sponsor shall, when requested by the Secretary, submit a copy of the transcript to the Secretary.

(e) Air and water quality.

(1) The Secretary shall not approve any project application for a project invloivng airport location, a major runway extension, or runway location unless the Governor of the State in which such project may be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved or where such standards have been promulgated by the Secretary of the Interior or the Secretary of Health, Education, and Welfare, certification shall be obtained from the appropriate Secretary. Notice of certification or of refusal to certify shall be provided within sixty days after the project application is received by the Secretary.

(2) The Secretary shall condition approval of any such project application on compliance during construction and operation with applicable air and water quality standards.

(f) Airport site selection; metropolitan area.

(1) Whenever the Secretary determines (A) that a metropolitan area comprised of more than one unit of State or local government is in need of an additional airport to adequately meet the air transportation needs of such area, and (B) that an additional airport for such area is consistent with the national airport system plan prepared by the Secretary, he shall notify, in writing, the governing authorities of the area concerned of the need for such additional airport and request such authorities to confer, agree upon a site for the location of such additional airport, and notify the Secretary of their selection. In order to facilitate the selection of a site for an additional airport under the preceding sentence, the Secretary shall exercise such of his authority under this subchapter as he may deem ap-

propriate to carry out the provisions of this paragraph. For the purposes of this subsection, the term "metropolitan area" means a standard metropolitan statistical area as established by the Bureau of the Budget, subject however to such modifications and extensions as the Secretary may determine to be appropriate for the purposes of this subsection.

(2) In the case of a proposed new airport serving any area, which does not include a metropolitan area, the Secretary shall not approve any airport development project with respect to any proposed airport site not approved by the community or communities in which the airport is proposed to be located.

(g) State standards.

(1) The Secretary is authorized to make grants to any State, upon application therefor, for not to exceed 75 per centum of the cost of developing standards for airport development at general aviation airports in such State, other than standards for safety of approaches. The aggregate of all grants made to any State under this paragraph shall not exceed $25,000.

(2) The Secretary is authorized to approve standards established by a State for airport development at general aviation airports in such State, other than standards for safety of approaches, and upon such approval such State standards shall be the standards applicable to such general aviation airports in lieu of any comparable standard established under subsection (a) of this section. State standards approved under this subsection may be revised, from time to time, as the State or the Secretary determines necessary, subject to approval of such revisions by the Secretary.

(3) There is authorized to be appropriated out of the Airport and Airway Trust Fund not to exceed $1,275,000 to carry out this subsection.

(h) The Secretary is authorized in connection with any project to accept a certification from a sponsor or a planning agency that such sponsor or agency will comply with all of the statutory and administrative requirements imposed on such sponsor or agency under this Act in connection with such project. Acceptance by the Secretary of a certification from a sponsor or agency may be rescinded by the Secretary at any time if, in his opinion, it is necessary to do so. Nothing in this subsection shall affect or discharge any responsibility or obligation of the Secretary under any other Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1652), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000b), title VIII of the Act of April 11, 1968 (42 U.S.C. 3601 et seq.), and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.). (Pub L. 91–258, title I, § 16, May 21, 1970, 84 Stat. 226.)

(As amended Pub. L. 93–44, § 4, June 18, 1973, 87 Stat. 89; Pub. L. 94–353, § 8, July 12, 1976, 90 Stat. 876.)

AMENDMENTS

1973—Subsec. (c)(1) Pub. L. 93–44 conditioned approval of airport development project on existence of a good title held by the United States or any agency thereof.

§ 1717. United States share of project costs.

(a) General provision.

Except as otherwise provided in this section, the United States share of allowable project costs payable on account of any approved airport development project submitted under section 1716 of this part—

(1) may not exceed 50 per centum of the allowable costs in the case of grants made from funds for fiscal years 1971, 1972, and 1973, and may not exceed 50 per centum for sponsors whose airports enplane not less than 1 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board, and may not exceed 75 per centum for sponsors whose airports enplane less than 1 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board and for sponsors of general aviation or reliever airports, in the case of grants made from funds for fiscal years 1974 and 1975; and

(2)(A) shall be 90 per centum of the allowable project costs in the case of grants from funds for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and for fiscal years 1977 and 1978, and shall be 80 per centum of the allowable project costs in the case of grants from funds for fiscal years 1979 and 1980, (i) for each air carrier airport (other than a commuter service airport) which enplanes less than one-quarter of 1 per centum of the total annual passengers enplaned as determined for purposes of making the latest annual apportionment under section 1715(a)(3) of this Act, (ii) for each commuter service airport, and (iii) for each general aviation airport; and

(B) shall be 75 per centum of the allowable project costs in the case of all other airports.

(b) Projects in public land States.

In the case of any State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) exceeding 5 per centum of the total area of all lands therein, the United States share under subsection (a) of this section shall be increased by whichever is the smaller of the following percentages thereof: (1) 25 per centum, or (2) a percentage equal to one-half of the percentage that the area of all such lands in that State is of its total area. In no event shall such United States share, as increased by this subsection, exceed the greater of (1) the percentage share determined under subsection (a) of this section, or (2) the percentage share applying on June 30, 1975, as determined under this subsection.

(c) Projects in Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

For fiscal years 1971 through 1975, the United States share payable on account of any approved project for airport development in the Virgin

Islands, American Samoa, or the Trust Territory of the Pacific Islands shall be any portion of the allowable project costs of the project, not to exceed 75 per centum, as the Secretary considers appropriate for carrying out the provisions of this subchapter.

(d) Landing aids; cost limitation.

To the extent that the project costs of an approved project for airport development represent the cost of (1) land required for the installation of approach light systems, (2) touchdown zone and centerline runway lighting, or (3) high intensity runway lighting, the United States share shall be the same percentage as is otherwise applicable to such project.

(e) Repealed. Pub. L. 94-353, § 9(e), July 12, 1976, 90 Stat. 878.

(Pub. L. 91-258, title I, § 17, May 21, 1970, 84 Stat. 228.) (As amended Pub. L. 92-174, § 4(c), Nov. 27, 1971, 85 Stat. 492; Pub. L. 93-44, § 5, June 18, 1973, 87 Stat. 89; Pub. L. 94-353, § 9, July 12, 1976, 90 Stat. 877.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93-44, § 5(1) substituted "share of allowable project costs payable" for "share payable", added cls. (1) and (2), and deleted former provision limiting United States share to 50 per centum of the allowable project costs.

Subsec. (e). Pub. L. 93-44, § 5(2), added subsec. (e).

1971—Subsec. (c). Pub. L. 92-174 inserted reference to American Samoa and the Trust Territory of the Pacific Islands.

§ 1718. Project sponsorship requirements; compliance; contracts between Secretary and public agencies; air traffic control activities; relief of sponsors.

(a) Sponsorship.

As a condition precedent to his approval of an airport development project under this subchapter, the Secretary shall receive assurances in writing, satisfactory to him, that—

(1) Public use.
the airport to which the project for airport development relates will be available for public use on fair and reasonable terms and without unjust discrimination, including the requirement that (A) each air carrier, authorized to engage directly in air transportation pursuant to section 401 or 402 of the Federal Aviation Act of 1958, using such airport shall be subject to nondiscriminatory and substantially comparable rates, fees, rentals, and other charges and nondiscriminatory and substantially comparable rules, regulations, and conditions as are applicable to all such air carriers which make similar use of such airport and which utilize facilities, subject to reasonable classifications such as tenants or nontenants, and combined passenger and cargo flights or all cargo flights, and such classification or status as tenant shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on tenant air carriers, and (B) each fixed-based operator using a general aviation airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport utilizing the same or similar facilities;

(2) Maintenance and operation.
the airport and all facilities thereon or connected therewith will be suitably operated and maintained, with due regard to climatic and flood conditions;

(3) Airport hazards.
the aerial approaches to the airport will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards;

(4) Compatible use of adjacent land.
appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft;

(5) Government use; charge.
all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft will be available to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, a charge may be made for a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities used;

(6) Air traffic control activities.
the airport operator or owner will furnish without cost to the Federal Government for use in connection with any air traffic control activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction at Federal expense of space or facilities for such purposes;

(7) Accounting.
all project accounts and records will be kept in accordance with a standard system of accounting prescribed by the Secretary after consultation with appropriate public agencies;

(8) Self-sustaining fee and rental structure.
the airport operator or owner will maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport, taking into account such factors as the volume of traffic and economy of collection, except that no part of the Federal share of an airport development project for which a grant is made under this title or under the Federal Airport Act (49 U.S.C. 1101 et seq.) shall be included in the rate base in establishing fees, rates, and charges for users of that airport;

(9) Reports.
the airport operator or owner will submit to the Secretary such annual or special airport financial and operations reports as the Secretary may reasonably request; and

(10) Inspection of records.
the airport and all airport records will be available for inspection by any duly authorized agent of the Secretary uopn reasonable request.

To insure compliance with this section, the Secretary shall prescribe such project sponsorship requirements, consistent with the terms of this subchapter, as he considers necessary. Among other steps to insure such compliance the Secretary is authorized to enter into contracts with public agencies, on behalf of the United States. Whenever the Secretary obtains from a sponsor any area of land or water, or estate therein, or rights in buildings of the sponsor and constructs space or facilities thereon at Federal expense, he is authorized to relieve the sponsor from any contractual obligation entered into under this subchapter or the Federal Airport Act to provide free space in airport buildings to the Federal Government to the extent he finds that space no longer required for the purposes set forth in paragraph (6) of this section.

(b) Consultation.

In making a decision to undertake any project under this title, any sponsor of an air carrier airport shall consult with air carriers using the airport at which such airport development project is proposed and any sponsor of a general aviation airport shall consult with fixed-base operators using the airport at which such airport development project is proposed. (Pub. L. 91–258, title I, § 18, May 21, 1970, 84 Stat. 229; amended Pub. L. 94–353, § 10, July 12, 1976, 90 Stat. 878.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–353 added the final clauses to paragraphs (1) and (8) and placed the ten paragraphs under the side heading "(a) Sponsorship."
Subsec. (b). Pub. L. 94–353 added subsec. (b).

§ 1719. Grant agreements; offer of terms and conditions; acceptance.

Upon approving a project application for airport development, the Secretary, on behalf of the United States, shall transmit to the sponsor or sponsors of the project application an offer to make a grant for the United States share of allowable project costs. An offer shall be made upon such terms and conditions as the Secretary considers necessary to meet the requirements of this subchapter and the regulations prescribed thereunder. Each offer shall state a definite amount as the maximum obligation of the United States payable from funds authorized by this subchapter, and shall stipulate the obligations to be assumed by the sponsor or sponsors. In any case where the Secretary approves an application for a project which will not be completed in one fiscal year, the offer shall, upon request of the sponsor, provide for the obligation of funds apportioned or to be apportioned to the sponsor pursuant to section 1715(a)(3)(A) of this title for such fiscal years (including future fiscal years) as may be necessary to pay the United States share of the cost of such project. If and when an offer is accepted in writing by the sponsor, the offer and acceptance shall comprise an agreement constituting an obligation of the United States and of the sponsor. Thereafter, the amount stated in the accepted offer as the maximum obligation of the United States may not be increased by more than 10 per centum. Unless and until an agreement has been executed, the United States may not pay, nor be obligated to pay, any portion of the costs which have been or may be incurred. (Pub. L. 91–258, title I, § 19, May 21, 1970, 84 Stat. 230; amended Pub. L. 94–353, § 11, July 12, 1976, 90 Stat. 879.)

AMENDMENTS

1976—Pub. L. 94–353 added the fourth sentence.

§ 1720. Project costs.

(a) Allowable project costs; regulations.

Except as provided in section 1721 of this title, the United States may not pay, or be obligated to pay, from amounts appropriated to carry out the provisions of this subchapter, any portion of a project cost incurred in carrying out a project for airport development unless the Secretary has first determined that the cost is allowable. A project cost is allowable if—

(1) it was a necessary cost incurred in accomplishing airport development in conformity with approved plans and specifications for an approved airport development project and with the terms and conditions of the grant agreement entered into in connection with the project;

(2) it was incurred subsequent to the execution of the grant agreement with respect to the project, and in connection with airport development accomplished under the project after the execution of the agreement. However, the allowable costs of a project may include any necessary costs of formulating the project (including the costs of field surveys and the preparation of plans and specifications, the acquisition of land or interests therein or easements through or other interests in airspace, and any necessary administrative or other incidental costs incurred by the sponsor specifically in connection with the accomplishment of the project for airport development, which would not have been incurred otherwise) which were incurred subsequent to May 13, 1946;

(3) in the opinion of the Secretary it is reasonable in amount, and if the Secretary determines that a project cost is unreasonable in amount, he may allow as an allowable project cost only so much of such project cost as he determines to be reasonable; except that in no event may he allow project costs in excess of the definite amount stated in the grant agreement; and

(4) it has not been included in any project authorized under section 1713 of this title.

The Secretary is authorized to prescribe such regu-

lations, including regulations with respect to the auditing of project costs, as he considers necessary to effectuate the purposes of this section.

(b) Terminal development.

(1) Notwithstanding any other provision of this title, upon certification by the sponsor of any air carrier airport that such airport has, on the date of submittal of the project application, all the safety and security equipment required for certification of such airport under section 612 of the Federal Aviation Act of 1958, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning or deplaning from aircraft other than air carrier aircraft, the Secretary may approve, as allowable project costs of a project for airport development at such airport, terminal development (including multimodal terminal development) in nonrevenue producing public-use areas which are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport, including, but not limited to, vehicles for the movement of passengers between terminal facilities or between terminal facilities and aircraft.

(2) Only sums apportioned under section 1715 (a) (3) (A) to the sponsor of an air carrier airport shall be obligated for project costs allowable under paragraph (1) of this subsection in connection with airport development at such airport, and no more than 60 per centum of such sums apportioned for any fiscal year shall be obligated for such costs.

(3) Sums apportioned under section 1715(a) (3) (A) to the sponsor of an air carrier airport at which terminal development was carried out on or after July 1, 1970, and before the date of enactment of this paragraph shall be available, subject to the limitations contained in paragraph (2) of this subsection, for the immediate retirement of the principal of bonds or other evidences of indebtedness the proceeds of which were used for that part of the terminal development at such airport the cost of which is allowable under paragraph (1) of this subsection subject to the following conditions:

(A) That such sponsor submits the certification required under paragraph (1) of this subsection.

(B) That the Secretary determines that no project for airport development at such airport outside the terminal area will be deferred if such sums are used for such retirement.

(C) That no funds available for airport development under this Act shall be obligated for any project for additional terminal development at such airport for a period of three years beginning on the date any such sums are used for such retirement.

(4) Notwithstanding section 1717, the United States share of project costs allowable under paragraph (1) of this subsection shall be 50 per centum.

(5) The Secretary shall approve project costs allowable under paragraph (1) of this subsection under such terms and conditions as may be necessary to protect the interests of the United States.

(c) Disallowable project costs.

Except as provided in subsection (b) of this section, the following are not allowable projects costs: (1) the cost of construction of that part of an airport development project intended for use as a public parking facility for passenger automobiles; or (2) the cost of construction, alteration, or repair of a hangar or of any part of an airport building except such of those buildings or parts of buildings intended to house facilities or activities directly related to the safety of persons at the airport. (Pub. L. 91–258, title I, § 20, May 21, 1970, 84 Stat. 230, amended Pub. L. 94–353, § 12, July 12, 1976, 90 Stat. 879.)

§ 1721. Payments under grant agreements; advance payments; percentage; recovery of excess and advance payments.

The Secretary, after consultation with the sponsor with which a grant agreement has been entered into, may determine the times and amounts in which payments shall be made under the terms of a grant agreement for airport development. Payments in an aggregate amount not to exceed 90 per centum of the United States share of the total estimated allowable project costs may be made from time to time in advance of accomplishment of the airport development to which the payments relate, if the sponsor certifies to the Secretary that the aggregate expenditures to be made from the advance payments will not at any time exceed the cost of the airport development work which has been performed up to that time. If the Secretary determines that the aggregate amount of payments made under a grant agreement at any time exceeds the United States share of the total allowable project costs, the United States shall be entitled to recover the excess. If the Secretary finds that the airport development to which the advance payments relate has not been accomplished within a reasonable time or the development is not completed, the United States may recover any part of the advance payment for which the United States received no benefit. Payments under a grant agreement shall be made to the official or depository authorized by law to receive public funds and designated by the sponsor. (Pub. L. 91–258, title I, § 21, May 21, 1970, 84 Stat. 231.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1720 of this title.

§ 1722. Performance of construction work.

(a) Regulations.

The construction work on any project for airport development approved by the Secretary pursuant to section 1716 of this title shall be subject to inspection and approval by the Secretary and in accordance with regulations prescribed by him. Such regulations shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary. No such regulation shall have the effect of altering any contract in connection with any project entered into without actual notice of the regulation.

(b) Minimum wage rates.

All contracts in excess of $2,000 for work on projects for airport development approved under this subchapter which involve labor shall contain provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

(c) Other labor provisions.

All contracts for work on projects for airport development approved under this subchapter which involve labor shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed; and (2) that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given, where they are qualified, to individuals who have served as persons in the military service of the United States, as defined in section 511(1) of the Appendix to Title 50, and who have been honorably discharged from such service. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates. (Pub. L. 91–258, title I, § 22, May 21, 1970, 84 Stat. 231.)

§ 1723. Use of Government-owned lands.

(a) Requests for use.

Subject to the provisions of subsection (c) of this section, whenever the Secretary determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace.

(b) Execution of conveyances.

Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall at the option of the Secretary, revert to the United States.

(c) Exemption of certain lands.

Unless otherwise specifically provided by law, the provisions of subsections (a) and (b) of this section shall not apply with respect to lands owned or controlled by the United States within any national park, national monument, national recreation area, or similar area under the administration of the National Park Service; within any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the Bureau of Sport Fisheries and Wildlife; or within any national forest or Indian reservation. (Pub. L. 91–258, title I, § 23, May 21, 1970, 84 Stat. 232.)

Ex. Ord. No. 10536. Exercise of Functions Without Approval of the President

Ex. Ord. No. 10536, June 9, 1954, 19 F.R. 3437, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided that:

The authority vested in the heads of departments and agencies by subsection (b) of section 16 of the Federal Airport Act, approved May 13, 1946 (60 Stat. 179), with the approval of the President and the Attorney General of the United States, to perform any acts and to execute any instruments necessary to make conveyances requested by the Secretary of Transportation under subsection (a) of the said section 16 may be exercised by such heads of departments and agencies without the approval of the President.

§ 1724. Reports to Congress.

On or before the third day of January of each year the Secretary shall make a report to the Congress describing his operations under this subchapter during the preceding fiscal year. The report shall include a detailed statement of the airport development accomplished, the status of each project undertaken the allocation of appropriations, and an itemized statement of expenditures and receipts. (Pub. L. 91–258, title I, § 24, May 21, 1970, 84 Stat. 232.)

§ 1725. False statements, representations, or reports; penalties.

Any officer, agent, or employee of the United States, or any officer, agent, or employee of any public agency, or any person, association, firm, or corporation who, with intent to defraud the United States—

(1) knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof, in connection with the submission of plans, maps, specifications, contracts, or estimates of project costs for any project submitted to the Secretary for approval under this subchapter;

(2) knowingly makes any false statement, false

representation, or false report or claim for work or materials for any project approved by the Secretary under this subchapter, or;

(3) knowingly makes any false statement or false representation in any report required to be made under this subchapter;

shall, upon conviction thereof, be punished by imprisonment for not to exceed five years or by a fine of not to exceed $10,000, or by both. (Pub. L. 91–258, title I, § 25, May 21, 1970, 84 Stat. 233.)

§ 1726. Access to records.

(a) Recordkeeping requirements.

Each recipient of a grant under this subchapter shall keep such records as the Secretary may prescribe, including records which fully disclose the amount and the disposition by the recipient of the proceeds of the grant, the total cost of the plan or program in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the plan or program supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audit and examination.

The Secretary and the Comptroller General of the United States or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to grants received under this subchapter.

(c) Audit reports; report to Congress; regulations.

In any case in which an independent audit is made of the accounts of a recipient of a grant under this subchapter relating to the disposition of the proceeds of such grant or relating to the plan or program in connection with which the grant was given or used, the recipient shall file a certified copy of such audit with the Comptroller General of the United States not later than six months following the close of the fiscal year for which the audit was made. On or before January 3 of each year the Comptroller General shall make a report to the Congress describing the results of each audit conducted or reviewed by him under this section during the preceding fiscal year. The Comptroller General shall prescribe such regulations as he may deem necessary to carry out the provisions of this subsection.

(d) Withholding information.

Nothing in this section shall authorize the withholding of information by the Secretary or the Comptroller General of the United States, or any officer or employee under the control of either of them, from the duly authorized committees of the Congress. (Pub. L. 91–258, title I, § 26, May 21, 1970, 84 Stat. 233.)

§ 1727. General powers of Secretary.

The Secretary is empowered to perform such acts, to conduct such investigations and public hearings, to issue and amend such orders, and to make and amend such regulations and procedures, pursuant to and consistent with the provisions of this subchapter, as he considers necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this subchapter. (Pub. L. 91–258, title I, § 27, May 21, 1970, 84 Stat. 233.)

§ 1728. State demonstration programs.

(a) Demonstration programs.

If the Secretary determines, after review of the certification required by subsection (b) of this section, that a State is capable of managing a demonstration program for administering United States grants for general aviation airports in that State, the Secretary may make a grant for such purpose to such State of funds apportioned to it under section 1715(a)(4)(A) of this Act and of any part of the discretionary funds available under section 1715(a)(4)(C) of this Act. Such a grant shall be conditioned on a requirement that such State grant funds to airport sponsors in the same manner and subject to the same conditions as the Secretary imposes in manking grants to such sponsors under this title.

(b) Certificate requirements.

If a State wishes to manage a demonstration program for administering United States grants for general aviation airports, the Governor or the chief executive officer of such State shall certify to the Secretary, in the form and manner prescribed by the Secretary, that—

(1) the State complies with all eligibility requirements and criteria established by this section and by the Secretary.

(2) such State's participation in the demonstration program has been specifically authorized by an action of such State's legislature duly taken after the date of enactment of this section, or if such State's legislature is not in regular session on such date and will not meet again in regular session before January 1, 1977, such participation has been authorized by such State's Governor or chief executive officer; and

(3) such State's legislature has authorized the appropriation of State funds for the development of general aviation airports in such State during the period for which funds are sought under this section.

(c) Restrictions.

The Secretary shall not, pursuant to this section—

(1) enter into demonstration projects in more than four States;

(2) allow any funds granted to States to be used to pay costs incurred by the States in administering the demonstration programs;

(3) initiate any demonstration program after January 1, 1977; and

(4) make a grant to any State after September 30, 1978.

(d) Report.

The Secretary shall evaluate and report to Congress, not later than March 31, 1978, on the results

of any demonstration programs assisted under this section. (As added Pub. L. 94-353, § 13, July 12, 1976, 90 Stat. 880.)

§ 1729. Air carrier airport designation.

Notwithstanding any other provision of this title, in the case of any public airport at which (A) an air carrier was or is certificated by the Civil Aeronautics Board under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) to serve a city served through such airport, and (B) either (i) service to such city by every such certificated air carrier has been suspended as authorized by the Civil Aeronautics Board, or (ii) authority to serve such city has been deleted from the certificates of every such air carrier by the Civil Aeronautics Board after the date of enactment of this section, and (C) such airport is served by an intrastate air carrier operating in intrastate air transportation within the meaning of sections 101(22) and 101(23) of the Federal Aviation Act of 1958 (49 U.S.C. 1301), such airport shall be deemed to be an air carrier airport (other than a commuter service airport) for the purposes of this title. (As added Pub. L. 94-353, § 14, July 12, 1976, 90 Stat. 881.)

§ 1730. Civil Rights.

The Secretary shall take affirmative action to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds received from any grant made under this title. The Secretary shall promulgate such rules as he deems necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964. The provisions of this section shall be considered to be in addition to and not in lieu of the provisions of title VI of the Civil Rights Act of 1964.
(As added Pub. L. 94-353, § 14, July 12, 1976, 90 Stat. 881.)

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 1741. Maximum charges for certain overtime services.

(a) Customs Service, Immigration and Naturalization Service, Public Health Service, and Department of Agriculture; services for private aircraft or vessel upon domestic arrival or departure.

Notwithstanding the provisions of section 1451 of Title 19 or any other provisions of law, the maximum amount payable by the owner, operator, or agent of any private aircraft or private vessel for services performed on or after July 1, 1970, upon the request of such owner, operator, or agent, by officers and employees of the Customs Service, by officers and employees of the Immigration and Naturalization Service, by officers and employees (including an independent contractor performing inspectional services) of the Public Health Service, and by officers and employees of the Department of Agriculture, on a Sunday or holiday, or at any time after 5 o'clock postmeridian or before 8 o'clock antemeridian on a week day, in connection with the arrival in or departure from the United States of such private aircraft or vessel, shall not exceed $25.

(b) Free week day services of regular personnel.

Notwithstanding any other provision of law, no payment shall be required for services described in subsection (a) of this section if such services are performed on a week day and an officer or employee stationed on his regular tour of duty at the place of arrival or departure is available to perform such services.

(c) Credit against expenses; deposit of collections in Treasury.

Amounts payable for services described in subsection (a) of this section shall be collected by the Department or agency providing the services and shall be deposited into the Treasury of the United States to the credit of the appropriation of that agency charged with the expense of such services.

(d) Definitions.

As used in this section—

(1) the term "private aircraft" means any civilian aircraft not being used to transport persons or property for compensation or hire, and

(2) the term "private vessel" means any civilian vessel not being used (A) to transport persons or property for compensation or hire, or (B) in fishing operations or in processing of fish or fish products.

(e) The cost of any inspection or quarantine service which is required to be performed by the Federal Government or any agency thereof at airports of entry or other places of inspection as a consequence of the operation of aircraft, and which is performed during regularly established hours of service on Sundays or holidays shall be reimbursed by the owners or operators of such aircraft only to the same extent as if such service had been performed during regularly established hours of service on weekdays. Notwithstanding any other provision of law, administrative overhead costs associated with any inspection or quarantine service required to be performed by the United States Government, or any agency thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof. (Pub. L. 91-258, title I, § 53, May 21, 1970, 84 Stat. 236; amended Pub. L. 94-353, § 15(a), July 12, 1976, 90 Stat. 882.)

AMENDMENTS

1976—Subsec. (e) Pub. L. 94-353 added subsec. (e).

§ 1742. Airport and Airway Trust Fund.

(a) Creation.

There is established in the Treasury of the United States a trust fund to be known as the "Airport and Airway Trust Fund" (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

(b) Transfer to Trust Fund of amounts equivalent to certain taxes.

There is hereby appropriated to the Trust Fund—

(1) amounts equivalent to the taxes received in the Treasury after June 30, 1970, and before July 1, 1980, under subsections (c) and (d) of section 4041 (taxes on aviation fuel) and under sections 4261, 4271, and 4491 (taxes on transportation by air and on use of civil aircraft) of the Internal Revenue Code of 1954;

(2) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after June 30, 1970, and before July 1, 1980, under section 4081 of such Code, with respect to gasoline used in aircraft; and

(3) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after June 30, 1970, and before July 1, 1980, under paragraphs (2) and (3) of section 4071(a) of such Code, with respect to tires and tubes of the types used on aircraft.

The amounts appropriated by paragraphs (1), (2), and (3) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraphs (1), (2), and (3) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) Transfer of unexpended funds.

At the close of June 30, 1970, there shall be transferred to the Trust Fund all unexpended funds which have been appropriated before July 1, 1970, out of the general fund of the Treasury to meet obligations of the United States (1) described in subparagraph (B) or (C) of subsection (f)(1) of this section, or (2) incurred under the Federal Airport Act (49 U.S.C., sec. 1101 et seq.).

(d) Appropriation of additional sums.

There are hereby authorized to be appropriated to the Trust Fund such additional sums as may be required to make the expenditures referred to in subsection (f) of this section.

(e) Management; report to Congress; investment: general provision, sale of obligations, interest on certain proceeds.

(1) It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Transportation) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next five fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price. The purpose for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the Unitied States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(B) Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(3) Paragraph (2) of this subsection shall not apply until the beginning of the fiscal year immediately following the first fiscal year beginning after June 30, 1970, in which the receipts of the Trust Fund under subsection (b) of this section exceed 80 percent of the expenditures from the Trust Fund under subsection (f)(1) of this section.

(f) Expenditures from Trust Fund; airport and airway program; transfers from Trust Fund on account of certain refunds; transfers from Trust Fund on account of certain section 39 credits.

(1) Amounts in the Trust Fund shall be available, as provided by appropriation Acts, for making expenditures after June 30, 1970, and before October 1, 1980, to meet those obligations of the United States—

(A) incurred under subchapter I of this chapter or of the Airport and Airway Development Act Amendments of 1976 (as such Acts were in effect on the date of the enactment of the Airport and Airway Development Act Amendments of 1976);

(B) heretofore or hereafter incurred under the Federal Aviation Act of 1958, as amended, which are attributable to planning, research and development, construction, or operation and maintenance of—

(i) air traffic control,

(ii) air navigation,

(iii) communications, or

(iv) supporting services,

for the airway system; or

(C) for those portions of the administrative expenses of the Department of Transportation which are attributable to activities described in subparagraph (A) or (B).

(2) The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to—

(A) the amounts paid after June 30, 1970, and before October 1, 1980, in respect of fuel used in aircraft, under sections 6420 (relating to amounts paid in respect of gasoline used on farms), 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes), and 6427 (relating to fuels not used for taxable purposes) of the Internal Revenue Code of 1954, and

(B) the amounts paid under section 6426 of such Code (relating to refund of aircraft use tax where plane transports for hire in foreign air commerce), on the basis of claims filed for periods beginning after June 30, 1970.

(3) The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section 39 of the Internal Revenue Code of 1954 with respect to fuel used in aircraft during taxable years ending after June 30, 1970, and beginning before October 1, 1980, and attributable to use after June 30, 1970, and before October 1, 1980. Such amounts shall be transferred on the basis of estimates by the Secretary of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the credits allowed. (Pub. L. 91–258, title II, § 208(a)–(f), May 21, 1970, 84 Stat. 250; amended Pub. L. 94–353, title III, § 301, July 12, 1976, 90 Stat. 886.)

2. Bureau of Oceans and International Environmental and Scientific Affairs

Pub. L. 93–126 § 9

(See Bureau of Oceans and International Environmental and Scientific Affairs under title VIII *Oceanography*)

3. Cabinet Committee on Environment

Ex. Order 11472, 34 F.R. 4147

(See Ex. Order 11472 under title III *Executive Orders*)

4. Commission on Population Growth and the American Future

Pub. L. 91–213 (84 Stat. 67)

"That the Commission on Population Growth and the American Future is hereby established to conduct and sponsor such studies and research and make such recommendations as may be necessary to provide information and education to all levels of government in the United States, and to our people, regarding a broad range of problems associated with population growth and their implications for America's future.

"MEMBERSHIP OF COMMISSION

"SEC. 2 (a) The Commission on Population Growth and the American Future (hereinafter referred to as the 'Commission') shall be composed of—

"(1) two Members of the Senate who shall be members of different political parties and who shall be appointed by the President of the Senate;

"(2) two Members of the House of Representatives who shall be members of different political parties and who shall be appointed by the Speaker of the House of Representatives; and

"(3) not to exceed twenty members appointed by the President.

"(b) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Commission.

"(c) The majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

"COMPENSATION OF MEMBERS OF THE COMMISSION

"SEC. 3. (a) Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(b) Members of the Commission who are not officers or full-time employees of the United States shall each receive $100 per diem when engaged in the actual performance of duties vested in the Commission.

"(c) All members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

"DUTIES OF THE COMMISSION

"SEC. 4. The Commission shall conduct an inquiry into the following aspects of population growth in the United States and its foreseeable social consequences:

"(1) the probable course of population growth, in-

ternal migration, and related demographic developments between now and the year 2000;

"(2) the resources in the public sector of the economy that will be required to deal with the anticipated growth in population;

"(3) the ways in which population growth may affect the activities of Federal, State, and local government;

"(4) the impact of population growth on environmental pollution and on the depletion of natural resources; and

"(5) the various means appropriate to the ethical values and principles of this society by which our Nation can achieve a population level properly suited for its environmental, natural resources, and other needs.

"STAFF OF THE COMMISSION

"SEC. 5. (a) The Commission shall appoint an Executive Director and such other personnel as the Commission deems necessary without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service and shall fix the compensation of such personnel without regard to the provisions of chapter 51 and subtitle II of chapter 53 of such title relating to classification and General Schedule pay rates: *Provided*, That no personnel so appointed shall receive compensation in excess of the rate authorized for GS–18 by section 5332 of such title.

"(b) The Executive Director, with the approval of the Commission, is authorized to obtain services in accordance with the provisions of section 3109 of title 5 of the United States Code, but at rates for individuals not to exceed the per diem equivalent of the rate authorized for GS–18 by section 5332 of such title.

"(c) The Commission is authorized to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

"GOVERNMENT AGENCY COOPERATION

"SEC. 6. The Commission is authorized to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; and each such department or agency is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information and assistance to the Commission upon reqeust made by the Chairman or any other member when acting as Chairman.

"ADMINISTRATIVE SERVICES

"SEC. 7. The General Services Administration shall provide administrative services for the Commission on a reimbursable basis.

"REPORTS OF COMMISSION: TERMINATION

"SEC. 8. In order that the President and the Congress may be kept advised of the progress of its work, the Commission shall, from time to time, report to the President and the Congress such significant findings and recommendations as it deems advisable. The Commission shall submit an interim report to the President and the Congress one year after it is established and shall submit its final report two years after the enactment of this Act. The Commission shall cease to exist sixty days after the date of the submission of its final report.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 9. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions of this Act."

5. Development of a National Scenic and Recreational Highway

23 U.S.C. 148

§ 148. Development of a national scenic and recreational highway.

(a) As soon as possible after the date of enactment of this section, the Secretary shall establish criteria for the location and construction or reconstruction of the Great River Road by the ten States bordering the Mississippi River. Such criteria shall include requirements that—

(1) priority be given in the location of the Great River Road near or easily accessible to the larger population centers of the State and further priority be given to the construction and improvement of the Great River Road in the proximity of the confluence of the Mississippi River and the Wisconsin River;

(2) the Great River Road be connected with other Federal-aid highways and preferably with the Interstate System;

(3) the Great River Road be marked with uniform identifying signs;

(4) effective control, as defined in section 131 of this title, of signs, displays, and devices will be provided along the Great River Road;

(5) the provisions of section 129(a) of this title shall not apply to any bridge or tunnel on the Great River Road and no fees shall be charged for the use of any facility constructed with assistance under this section.

(b) For the purpose of this section, the term "construction" includes the acquisition of areas of historical, archeological, or scientific interest, necessary easements for scenic purposes, and the construction or reconstruction of roadside rest areas (including appropriate recreational facilities), scenic viewing areas, and other appropriate facilities as determined by the Secretary.

(c) Highways constructed or reconstructed pursuant to this section (except subsection (f)) shall be part of the Federal-aid system.

(d) Funds appropriated for each fiscal year pursuant to subsection (g) shall be apportioned among the ten States bordering the Mississippi River on the basis of their relative needs as determined by the Secretary for payments to carry out this section.

(e) The Federal share of the cost of any project for any construction or reconstruction pursuant to the preceding subsections of this section shall be that provided in section 120 of this title for the Federal-aid system on which such project is located, and if such project is not on such a system, such share shall be 70 per centum of such cost.

(f) The Secretary is authorized to consult with the heads of other Federal departments and agencies having jurisdiction over Federal lands open to the public in order to enter into appropriate arrangements for necessary construction or reconstruction

of highways on such lands to carry out this section. Highways constructed or reconstructed by a State pursuant to this section which are not on a Federal-aid system, and highways constructed or reconstructed under this subsection, shall be subject to the criteria applicable to highways constructed or reconstructed pursuant to subsection (c) of this section. Funds authorized pursuant to subsection (g) shall be used to pay the entire cost of construction or reconstruction pursuant to the first sentence of this subsection.

(g) There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund, for construction or reconstruction of roads on a Federal-aid highway system, not to exceed $10,000,000 for the fiscal year ending June 30, 1974, $25,000,000 for the fiscal year ending June 30, 1975, and $25,000,000 for the fiscal year ending June 30, 1976, for allocations to the States pursuant to this section, and there is authorized to be appropriated to carry out this section out of any money in the Treasury not otherwise appropriated, not to exceed $10,000,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, for construction and reconstruction of roads not on a Federal-aid highway system. (Added Pub. L. 93–87, title I, § 129(b), Aug. 13, 1973, 87 Stat. 265.)

6. Easements for Rights-of-way

10 U.S.C. 2668, 2669

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

(1) railroad tracks;

(2) oil pipe lines;

(3) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines;

(4) canals;

(5) ditches;

(6) flumes;

(7) tunnels;

(8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;

(9) roads and streets; and

(10) any other purpose that he considers advisable, except a purpose covered by section 2669 of this title or by section 961 of title 43.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse for a two-year period; or

(3) abandonment.

(d) Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior. (Aug. 10, 1956, ch. 1041, 70A Stat. 150.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2668 (a)	43: 931b (less 2d and 3d provisos of 1st sentence, and less last sentence).	July 24, 1946, ch. 596, § 7, 60 Stat. 643; Oct. 25, 1951, ch. 563, § 101 (31st through 43d words), 65 Stat. 641.
2668 (b)	43: 931b (2d proviso of 1st sentence).	
2668 (c)	43: 931b (3d proviso of 1st sentence).	
2668 (d)	43: 931b (last sentence) [43: 931b is made applicable to the Navy by 50: 171–1 (16th through 21st words)].	

In subsection (a), the word "conditions" is omitted as covered by the word "terms". The description of the persons covered in the opening paragraph and the lands covered in clauses (1)—(10) is restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 1952). The exceptions to clause (10) make express the fact that the revised section does not cover certain easements authorized by earlier law. The word "over" includes the word "across". The words "of the United States", "and empowered", "acquired lands", "jurisdiction and", and "municipality" are omitted as surplusage. The word "Commonwealth" is inserted to reflect the present status of Puerto Rico.

In subsection (b), the words "for the easement" are substituted for the words "for the purpose for which granted".

In subsections (b) and (c), the word "easement" is substituted for the word "rights-of-way".

In subsection (c), the word "terminate" is substituted for the words "annulled and forfeited". The words "and conditions" are omitted as covered by the word "terms". The words "two-year period" are substituted for the words "a period of two consecutive years". The words "of rights granted under authority hereof" are omitted as surplusage.

§ 2669. Easements for rights-of-way: gas, water, sewer pipe lines.

(a) If the Secretary of a military department finds that it will be in the public interest and will not substantially injure the interest of the United States in the property affected, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, for gas, water, and sewer pipe lines, to a State, Terri-

tory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse; or

(3) abandonment.

(d) The Secretary concerned shall include in his annual report to the President a complete statement of each easement granted under this section, including the name and address of the grantee, the purpose of the grant, and the benefits accruing to the United States or to the public. (Aug. 10, 1956, ch. 1041, 70A Stat. 151.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2669 (a)	10: 1351 (less 2d and last provisos).	May 17, 1926, ch. 313, § 1, 44 Stat. 562; Oct. 25, 1951, ch. 563, § 101 (22d through 30th words), 65 Stat. 641.
2669 (b)	No source.	
2669 (c)	10: 1351 (2d proviso).	
2669 (d)	10: 1351 (last proviso).	

Section 101 of the act of October 25, 1951, cited above, makes the act of May 17, 1926, cited above, applicable to the Navy.

In subsection (a), the word "conditions" is omitted as covered by the word "terms". The descriptions of the lands and persons covered are restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 52). The words "and empowered", "of the United States", "across", and "military reservations and other" are omitted as surplusage. The word "Commonwealth" is inserted to reflect the present status of Puerto Rico.

Subsection (b) is inserted for clarity and is based on the above cited opinion.

In subsection (c), the words "any easement" are substituted for the words "such rights-of-way". The word "terminate" is substituted for the words "annulled and forfeited". The words "and conditions" are omitted as covered by the word "terms". The words "of rights granted under the authority hereof" are omitted as surplusage.

In subsection (d), the words "a complete statement of each easement" are substituted for the words "a full and complete statement of each and all easements".

7. Economic Growth Center Development Highways

23 U.S.C. 143, Pub. L. 93–87 § 122

(a) In order to promote the desirable development of the Nation's natural resources, to revitalize and diversify the economy of rural areas and smaller communities, to enhance and disperse industrial growth, to encourage more balanced population patterns, to check, and, where possible, to reverse current migratory trends from rural areas and smaller communities, and to improve living conditions and the quality of the environment, the Secretary is authorized to make grants to States for projects for the construction, reconstruction, and improvement of development highways on a Federal-aid system (other than the Interstate System) to serve and promote the development of economic growth centers and surrounding areas, encourage the location of business and industry in rural areas, facilitate the mobility of labor in sparsely populated areas, and provide rural citizens with improved highways to such public and private services as health care, recreation, employment, education, and cultural activities, or otherwise encourage the social and economic development of rural communities, and for planning, surveys, and investigations in connection therewith.

(b) Each Governor may transmit to the Secretary his recommendations for (1) the selection of economic growth centers within the State, (2) priorities for the construction of development highways on a Federal-aid system (other than the Interstate System) to serve such centers, and (3) such other information as may be required by the Secretary, for his consideration in approving the selection of economic growth centers for projects.

(c) Upon the application of the State highway department of any State in which an economic growth center approved by the Secretary as eligible for a project is located, the Secretary is authorized to pay up to 100 per centum of the cost of engineering and economic surveys or other investigations necessary for the planning and design of development highways on a Federal-aid system (other than the Interstate System) needed to provide appropriate access to such growth center, including publicly owned airport facilities and public ports for water transportation which may be established to serve it, in order to carry out the purposes of this section.

(d) Except as otherwise provided in this section, all of the provisions of this title applicable to highways on the Federal-aid system on which such development highway is located except those which the Secretary determines are inconsistent with this section shall apply to development highways and to funds authorized to carry out this section. For the purposes of sections 105, 106, and 118 of this title, funds authorized to carry out this section shall be deemed to be apportioned on January 1 next preceding the commencement of the fiscal year for which authorized. No State shall receive in any fiscal year

more than 15 per centum of the funds authorized to carry out this section for such fiscal year.

(e) Except as otherwise provided in subsection (c) of this section, the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be the same as that provided under this title for any other project on the Federal-aid system on which such development highway is located.

* * * * *

(As amended Pub. L. 93–87, title I, § 122, Aug. 13, 1973, 87 Stat. 261.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–87, § 122(a), (c), substituted "projects" for "demonstration projects" and "a Federal-aid system (other than the Interstate System)" for "the Federal-aid primary system" and deleted "to demonstrate the role that highways can play" preceeding "to promote".

Subsec. (b). Pub. L. 93–87, § 122(a), substituted "projects" for "demonstration projects" and "a Federal-aid system (other than the Interstate system)" for "the Federal-aid primary system".

Subsec. (c). Pub. L. 93–87, § 122(a), substituted "project" for "demonstration project" and "a Federal-aid system (other than the Interstate system)" for "the Federal-aid primary system".

Subsec. (d). Pub. L. 93–87, § 122(a), substituted "highways on the Federal-aid system on which such development highway is located" for "Federal-aid primary highways".

Subsec. (e). Pub. L. 93–87, § 122(b), inserted introductory phrase "Except as otherwise provided in subsection (c) of this section," and substituted "the Federal share . . . shall be the same as that provided under this title for any other project on the Federal-aid system on which such development highway is located" for "Federal share . . . shall be increased by not to exceed an additional 20 per centum of the cost of such project, except that in no case shall the Federal share exceed 95 per centum of the cost of such project".

8. Energy Supply and Environment Coordination Act

15 U.S.C. 791–798

Sec.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 1857c–5, 1857c–10, 6274.

§ 791. Congressional declaration of purpose.

The purposes of this chapter are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources. (Pub. L. 93–319, § 1(b), June 22, 1974, 88 Stat. 246.)

§ 792. Coal conversion and allocation.

(a) Powerplant and fuel burning installations.

The Federal Energy Administrator—

(1) shall, by order, prohibit any powerplant, and

(2) may, by order, prohibit any major fuel burning installation, other than a powerplant,

from burning natural gas or petroleum products as its primary energy source, if the requirements of subsection (b) of this section are met and if (A) the Federal Energy Administrator determines such powerplant or installation on June 22, 1974, had, or thereafter acquires or is designed with, the capability and necessary plant equipment to burn coal, or (B) such powerplant or installation is required to meet a design or construction requirement under subsection (c) of this section.

(b) Prerequisites to issuance or effectiveness of orders prohibiting use of natural gas or petroleum products as primary energy source.

The requirements referred to in subsection (a) of this section are as follows:

(1) An order under subsection (a) of this section may not be issued with respect to a powerplant or installation unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of this chapter, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) of this section will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met; and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

(2)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(A) of Title 42 is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 1857c-10(d)(3)(B) of Title 42.

(3)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2) applies, so as to apply such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 1857c-10(d)(1)(B) of Title 42 that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 1857c-10(c) of Title 42, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(B) of Title 42 is the earliest date that such plant or installation will be able to comply with all applicable requirements of such 1857c-10 of Title 42. Such order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 1857c-10(d)(3)(B) of Title 42.

(c) Construction and design of powerplants or other major fuel burning installations.

The Federal Energy Administrator may require that any powerplant or other major fuel burning installation in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant or other major fuel burning installation may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) in the case of a powerplant to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any capital investment made as a result of any requirement imposed under this subsection.

(d) Allocation of coal.

The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or major fuel-burning installation to which an order under subsection (a) of this section has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this chapter.

(e) Definitions.

For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange.

(2) The term "coal" includes coal derivatives.

(f) Expiration of authority; effective dates.

(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, June 30, 1977. Such a rule or order may take effect at any time before January 1, 1985.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1984; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1985. (Pub. L. 93-319, § 2, June 22, 1974, 88 Stat. 246, amended Pub. L. 94-163, title I, § 101, Dec. 22, 1975, 89 Stat. 875.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-163, § 101(b) authorized the Administrator to prohibit any powerplant or other fuel burning installation from burning natural gas or petroleum products as its primary energy source if such powerplant or other installation is required to meet a design or construction requirement under subsec. (c) of this section.

Subsec. (c). Pub. L. 94-163, § 101(c), inserted "or other major fuel burning installation" after "powerplant" wherever it appears and inserted "in the case of a powerplant" after "if the Administrator determines that (1)".

Subsec. (f)(1). Pub. L. 94-163, § 101(a)(1), substituted "June 30, 1977" for "June 30, 1975" and "January 1, 1985" for "January 1, 1979".

Subsec. (f)(2). Pub. L. 94-163, § 101(a)(2), substituted "December 31, 1984" for "December 31, 1978" and "January 1, 1985" for "January 1, 1979".

§ 793. Protection of public health and environment.

(a) Distribution of low sulfur fuel.

Any allocation program provided for in section 792 of this title or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that avail-

able low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) Study of chronic effects of sulfur oxide emissions among exposed populations.

In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversations to burning coal to which section 1857c–10 of Title 42 applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) Major Federal actions significantly affecting the quality of the human environment.

(1) No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

(2) No action under section 792 of this title for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. However, before any action under section 792 of this title that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 4332(2)(C) of Title 42, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 792 of this title which will be in effect for more than a one-year period or any action to extend an action taken under section 792 of this title to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this chapter.

(d) Importation of hydroelectric energy.

In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 4332 of Title 42 for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York. (Pub. L. 93–319, § 7, June 22, 1974, 88 Stat. 259.)

§ 794. Energy conservation study.

(a) The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after June 22, 1974, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products, or goods, including an analysis of balance-of-payments and foreign relations implications of any such restrictions;

(2) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials; and

(3) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within ninety days of June 22, 1974, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of Title 23 for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of pro-

viding tax incentives for persons who use public mass transportation systems.

(Pub. L. 93–319, § 8, June 22, 1974, 88 Stat. 260.)

§ 795. Report to Congress by January 31, 1975.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974. (Pub. L. 93–319, § 9, June 22, 1974, 88 Stat. 261.)

§ 796. Reporting of energy information.

(a) Authority of Federal Energy Administrator to request, acquire, and collect energy information; rules and regulations.

For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this chapter or the Emergency Petroleum Allocation Act of 1973. The Federal Energy Administrator shall promptly promulgate rules pursuant to subsection (b)(1)(A) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

(b) Powers of Federal Energy Administrator in obtaining energy information; verification of accuracy; compliance orders.

(1) In order to obtain energy information for the purpose of carrying out the provisions of subsection (a) of this section, the Federal Energy Administrator is authorized—

(A) to require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources to submit reports;

(B) to sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(C) to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Federal Energy Administrator may determine; and

(D) to administer oaths.

(2) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, the Federal Energy Administrator, or any officer or employer[1] duly designated by him, upon presenting appropriate credentials and a written notice from the Federal Energy Administrator to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any such energy information.

(3) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Federal Energy Administrator, in the case of refusal to obey a subpena or order of the Federal Energy Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Development of initial report; quarterly reports; accounting practices.

(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b)(1)(A) of this section to develop, within thirty days after June 22, 1974, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following June 22, 1974, the Federal Energy Administrator shall develop and publish a report containing the following energy information:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying (with respect to each such oil, product, gas, or coal) country of origin, arrival point, quantity received, and the geographic distribution within the United States.

(B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator, his delegate pursuant to the Emergency Petroleum Allocation Act of 1973, or any other person authorized by law to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) amounts of products refined from such crude oil.

(D) Report of inventories, on a national, regional, and State-by-State basis—

(i) of various refined petroleum products, related refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) of various refined petroleum products, previous quarter deliveries and anticipated three-month available supplies;

(iii) of anticipated monthly supply of refined petroleum products, amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(iv) of LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

[1] So in original. Probably should be "employee".

(3) In order to carry out his responsibilities under subsection (a) of this section, the Federal Energy Administrator shall require, pursuant to subsection (b)(1)(A) of this section, that persons engaged, in whole or in part, in the production of crude oil or natural gas—

(A) keep energy information in accordance with the accounting practices developed pursuant to section 6383 of Title 42, and

(B) submit reports with respect to energy information kept in accordance with such practices.

The Administrator shall file quarterly reports with the President and the Congress compiled from accounts kept in accordance with such section 6383 of Title 42 and submitted to the Administrator in accordance with this paragraph. Such reports shall present energy information in the categories specified in subsection (c) of such section 6383 of Title 42 to the extent that such information may be compiled from such accounts. Such energy information shall be collected and such quarterly reports made for each calendar quarter which begins 6 months after the date on which the accounting practices developed pursuant to such section 6383 of Title 42 are made effective.

(d) Confidential information.

Upon a showing satisfactory to the Federal Energy Administrator by any person that any energy information obtained under this section from such person would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of Title 18; except that such information, or part thereof, shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this chapter and the Emergency Petroleum Allocation Act of 1973, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office, when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress, or any committee of Congress upon request of the Chairman.

(e) Definitions.

As used in this section:

(1) The term "energy information" includes (A) all information in whatever form on (i) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, and consumption of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.

(2) The term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(f) Availability of energy information.

Information obtained by the Administration under authority of this chapter shall be available to the public in accordance with the provisions of section 552 of Title 5.

(g) Independent nature of authority to gather energy information; expiration date.

(1) The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

(2) The provisions of this section expire at midnight, December 31, 1979, but such expiration shall not affect any administrative or judicial proceeding which relates to any act or failure to act if such act or failure to act was not in compliance with the requirements and authorities of this section and occurred prior to midnight, December 31, 1979. (Pub. L. 93–319, § 11, June 22, 1974, 88 Stat. 262, amended Pub. L. 94–163, title V, §§ 505(a), 506, Dec. 22, 1975, 89 Stat. 960.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 93–319 which, in addition to enacting this chapter, enacted sections 1857c–10 and 1857f–6f and amended sections 1857b–1, 1857c–5, 1857c–8, 1857c–9, 1857d–1, 1857f–1, 1857f–6e, 1857h–5, and 1857l of Title 42, The Public Health and Welfare.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), (c)(2)(C), and (d), is Pub. L. 93–159, Nov. 27, 1974, 87 Stat. 628, which is classified to section 751 et seq. of this title.

AMENDMENTS

1975—Subsec. (c)(3). Pub. L. 94–163, § 505(a), added subsec. (c)(3).

Subsec. (g)(2). Pub. L. 94–163, § 506, substituted "December 31, 1979" for "June 30, 1975" in two places.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 505(b) of Pub. L. 94–163 provided that: "The amendment made by subsection (a) to section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 [enacting subsec. (c)(3) of this section] shall take effect on the first day of the first accounting quarter to which such practices apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 797 of this title; title 42 sections 5917, 6274, 6299, 6346, 6381.

§ 797. Enforcement.

(a) It shall be unlawful for any person to violate any provision of section 792 of this title (relating to coal conversion and allocation) or section 796 of this title (relating to energy information) or to violate any rule, regulation, or order issued pursuant to any such provision.

(b)(1) Whoever violates any provision of subsection (a) of this section shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (a) of this section shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any coal in violation of an order or regulation issued pursuant to section 792(d) of this title. Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to section 792(d) of this title shall be fined not more than $50,000, or imprisoned not more than six months, or both.

(4) Whenever it appears to the Federal Energy Administrator or any person authorized by the Federal Energy Administrator to exercise authority under section 792 of this title or section 796 of this title that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (a) of this section the Federal Energy Administrator or such person may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (a) of this section.

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (a) of this section may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages. (Pub. L. 93–319, § 12, June 22, 1974, 88 Stat. 264.)

§ 798. Definitions.

(a) For purposes of this chapter and the Clean Air Act the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy Administration Act of 1974; except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this chapter and section 1857c–10 of Title 42.

(b) For purposes of this chapter, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in section 752(5) of this title. (Pub. L. 93–319, § 14, June 22, 1974, 88 Stat. 265.)

9. Environmental Court Feasibility Study

Pub. L. 92–500 § 9

Section 9 of Pub. L. 92–500 provided that: "The President, acting through the Attorney General, shall make a full and complete investigation and study of the feasibility of establishing a separate court, or court system, having jurisdiction over environmental matters and shall report the results of such investigation and study together with his recommendations to Congress not later than one year after the date of enactment of this Act [Oct. 18, 1972]."

10. Environmental Education Act

20 U.S.C. 1531–1536

Sec.

§ 1531. Congressional declaration of findings and purpose.

(a) The Congress of the United States finds that the deterioration of the quality of the Nation's environment and of its ecological balance poses a serious threat to the strength and vitality of the people of the Nation and is in part due to poor understanding of the Nation's environment and of the need for ecological balance; that presently there do not exist adequate resources for educating and informing citizens in these areas, and that concerted efforts in educating citizens about environmental quality and ecological balance are therefore necessary.

(b) It is the purpose of this chapter to encourage and support the development of new and improved curricula to encourage understanding of policies,

and support of activities designed to enhance environmental quality and maintain ecological balance; while giving due consideration to the economic considerations related thereto to demonstrate the use of such curricula in model educational programs and to evaluate the effectiveness thereof; to provide support for the initiation and maintenance programs in environmental education at the elementary and secondary levels; to disseminate curricular materials and other information for use in educational programs throughout the Nation; to provide training programs for teachers, other educational personnel, public service personnel, and community, labor, and industrial and business leaders and employees, and government employees at State, Federal, and local levels; to provide for the planning of outdoor ecological study centers; to provide for community education programs on preserving and enhancing environmental quality and maintaining ecological balance; and to provide for the preparation and distribution of materials by mass media in dealing with the environment and ecology. (As amended Pub. L. 93–278, § 4, May 10, 1974, 88 Stat. 121.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–278 qualified the declared purpose of the chapter by requiring that due weight be given to the economic considerations involved in enhancing environmental quality and maintaining ecological balance.

§ 1532. Environmental education programs.

(a) Office of environmental education; establishment; functions; Director; compensation; definition of "environmental education".

(1) There is established, within the Office of Education, an office of environmental education (referred to in this section as the "office") which, under the supervision of the Commissioner, through regulations promulgated by the Secretary, shall be responsible for (A) the administration of the program authorized by subsection (b) of this section and (B) the coordination of activities of the Office of Education which are related to environmental education. The office shall be headed by a Director who shall be compensated at a rate not to exceed that prescribed for grade GS–17 in section 5332 of Title 5.

(2) For the purposes of this chapter, the term "environmental education" means the educational process dealing with man's relationship with his natural and manmade surroundings, and includes the relation of population, pollution, resource allocation and depletion, conservation, transportation, technology, economic impact, and urban and rural planning to the total human environment.

(b) Grants and contracts implementing programs; authority of Commissioner of Education; eligible institutions; purposes of programs; uses of funds; applications for financial assistance; procedure, contents, and standards for approval of applications; limitations on Federal assistance; non-Federal contributions.

(1) The Commissioner shall carry out a program of making grants to, and contracts with, institutions of higher education, State and local educational agencies, regional educational research organizations, and other public and private agencies, organizations, and institutions (including libraries and museums) to support research, demonstration, and pilot projects designed to educate the public on the problems of environmental quality and ecological balance, except that no grant may be made other than to a nonprofit agency, organization or institution.

(2) Funds apprpriated for grants and contracts under this section shall be available for such activities as—

(A) the development of curricula (including interdisciplinary curricula) in the preservation and enhancement of environmental quality and ecological balance;

(B) dissemination of information relating to such curricula and to environmental education, generally;

(C) in the case of grants to State and local educational agencies, for the support of environmental education programs at the elementary and secondary educational levels;

(D) preservice and inservice training programs and projects (including fellowship programs, institutes, workshops, symposiums, and seminars) for educational personnel to prepare them to teach in subject matter areas associated with environmental quality and ecology, and for public service personnel, government employees, and business, labor, and industrial leaders and employees;

(E) planning of outdoor ecological study centers;

(F) community education programs on environmental quality, including special programs for adults; and

(G) preparation and distribution of materials suitable for use by the mass media in dealing with the environment and ecology.

In addition to the activities specified in the first sentence of this paragraph, such funds may be used for projects designed to demonstrate, test, and evaluate the effectiveness of any such activities, whether or not assisted under this section.

(3) (A) Financial assistance under this subsection may be made available only upon application to the Commissioner. Applications under this subsection shall be submitted at such time, in such form, and containing such information as the Secretary shall prescribe by regulation and shall be approved only if it—

(i) provides that the activities and services for which assistance is sought will be administered by, or under the supervision of, the applicant;

(ii) describes a program for carrying out one or more of the purposes set forth in the first sentence of paragraph (2) which holds promise of making a substantial contribution toward attaining the purposes of this section;

(iii) sets forth such policies and procedures as will insure adequate evaluation of the activities intended to be carried out under the application;

(iv) sets forth policies and procedures which assure that Federal funds made available under this chapter for any fiscal year will be so used as

to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in this section, and in no case supplant such funds.

(v) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title[1]; and

(vi) provides for making an annual report and such other reports, in such form and containing such information, as the Commissioner may reasonably require and for keeping such records, and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

(B) Applications from local educational agencies for financial assistance under this chapter may be approved by the Commissioner only if the State educational agency has been notified of the application and been given the opportunity to offer recommendations.

(C) Amendments of applications shall, except as the Secretary may otherwise provide by or pursuant to regulation, be subject to approval in the same manner as original applications.

(4) Federal assistance to any program or project under this section, other than those involving curriculum development, dissemination of curricular materials, and evaluation, shall not exceed 80 percentum of the cost of such program for the first fiscal year of its operation, including costs of administration, unless the Commissioner determines, pursuant to regulations adopted and promulgated by the Secretary establishing objective criteria for such determinations, that assistance in excess of such percentages is required in furtherance of the purposes of this section. The Federal share for the second year shall not exceed 60 per centum, and for the third year 40 per centum. Non-Federal contributions may be in cash or kind, fairly evaluated, including but not limited to plant, equipment, and services.

(c) Advisory Council on Environmental Education; establishment; Chairman; membership; functions.

(1) There is hereby established an Advisory Council on Environmental Education consisting of twenty-one members appointed by the Secretary. The Secretary shall appoint one member as Chairman. The Council shall consist of persons appointed from the public and private sector with due regard to their fitness, knowledge, and experience in matters of, but not limited to, academic, scientific, medical, economic, legal, resource conservation and production, urban and regional planning, and information media activities as they relate to our society and affect our environment, and shall give due consideration to geographical representation in the appointment of such members: *Provided, however,* That the Council shall consist of not less than three ecologists and three students. Subject to section 1233g(b) of this title, the Advisory Council shall continue to exist until October 1, 1977.

(2) The Council shall—

(A) advise the Commissioner and the office concerning the administration of, preparation of general regulations for, and operation of programs assisted under this section;

(B) make recommendations to the office with respect to the allocation of funds appropriated pursuant to subsection (d)[2] among the purposes set forth in paragraph (2) of subsection (b) of this section and the criteria to be used in approving applications, which criteria shall insure an appropriate geographical distribution of approved programs and projects throughout the Nation;

(C) develop criteria for the review of applications and their disposition; and

(D) evaluate programs and projects assisted under this section and disseminate the results thereof.

(As amended Pub. L. 93–278, §§ 2, 5, 6, May 10, 1974, 88 Stat. 121.)

AMENDMENTS

1974—Subsec. (a)(2). Pub. L. 93–278, § 5, substituted "transportation, technology, economic impact," for "transportation, technology,".

Subsec. (c)(1). Pub. L. 93–278, §§ 2, 6, substituted "scientific, medical, economic, legal" for "scientific, medical, legal" in the sentence dealing with the qualifications of persons to be appointed to the Council, and extended the life of the Council until July 1, 1977.

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a Council established by the President or an officer of the Federal Government, such Council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Council established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1533. Technical assistance to eligible agencies and organizations.

The Secretary of Health, Education, and Welfare, in cooperation with the heads of other agencies with relevant jurisdiction, shall, insofar as practicable upon request, render technical assistance to local educational agencies, public and private nonprofit organizations, institutions of higher education, agencies of local, State, and Federal governments and other agencies deemed by the Secretary to play a role in preserving and enhancing enviromental quality and maintaining ecological balance. The technical assistance shall be designed to enable the recipient agency to carry on education programs which are related to environmental quality and ecological balance. (Pub. L. 91–516, § 4, Oct. 30, 1970, 84 Stat. 1315.)

§ 1534. Additional grants.

(a) Authority of Commissioner; maximum amount; eligible organizations, etc.; purposes of grants.

[1] So in original.

[2] So in original.

In addition to the grants authorized under section 1532 of this title, the Commissioner, from the sums appropriated, shall have the authority to make grants, in sums not to exceed $10,000 annually, to nonprofit organizations such as citizens groups, volunteer organizations working in the environmental field, and other public and private nonprofit agencies, institutions, or organizations for conducting courses, workshops, seminars, symposiums, institutes, and conferences, especially for adults and community groups (other than the group funded).

(b) Priority of grants.

Priority shall be given to those proposals demonstrating innovative approaches to environmental education.

(c) Length of existence of interested organization or group; submission of annual report on Federal funds expended.

For the purposes of this section, the Commissioner shall require evidence that the interested organization or group shall have been in existence one year prior to the submission of a proposal for Federal funds and that it shall submit an annual report on Federal funds expended.

(d) Requirements for proposals submitted by organizations and groups.

Proposals submitted by organizations and groups under this section shall be limited to the essential information required to evaluate them, unless the organization or group shall volunteer additional information. (Pub. L. 91–516, § 5, Oct. 30, 1970, 84 Stat. 1315.)

§ 1535. Administration by Commissioner; utilization of services and facilities of Federal agencies and public or private agencies or institutions; agreements; compensation; annual publication and distribution of list of supported projects.

In administering the provisions of this chapter, the Commissioner is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public or private agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursements, as may be agreed upon. The Commissioner shall publish annually a list and description of projects supported under this chapter and shall distribute such list and description to interested educational institutions, citizens' groups, conservation organizations, and other organizations and individuals involved in enhancing environmental quality and maintaining ecological balance. (Pub. L. 91–516, § 6, Oct. 30, 1970, 84 Stat. 1315.)

§ 1536. Authorization of appropriations.

There is authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1971, $15,000,000 for the fiscal year ending June 30, 1972, $25,000,000 for the fiscal year ending June 30, 1973, $5,000,000 for the fiscal year ending June 30, 1975, $10,000,000 for the fiscal year ending June 30, 1976, and $15,000,000 for the fiscal year ending June 30, 1977, for carrying out the purposes of this chapter. (As amended Pub. L. 93–278, § 3, May 10, 1974, 88 Stat. 121.)

AMENDMENTS

1974—Pub. L. 93-278 authorized appropriation of $5,000,000 for the fiscal year ending June 30, 1975, $10,000,000 for the fiscal year ending June 30, 1976, and $15,000,000 for the fiscal year ending June 30, 1977.

11. Environmental Financing Act of 1972

33 U.S.C. 1281 note

(See Environmental Financing Act of 1972 under title IX *Pollution Control, Financing*)

12. Environmental Impact Statements—Highways

Pub. L. 93–87 § 141

SEC. 141. (a) The Secretary of Transportation shall, not later than forty-five days after the date of enactment of this section, complete all necessary action on (1) the environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, and (2) the application for approval under the General Bridge Act of 1946, with respect to the proposal for construction by the Department of Transportation of the State of New Jersey of a bridge over the Raritan River in such State for the purpose of such State's Highway Route 18.

(b) The Secretary of Transportation shall—

(1) by October 1, 1973—

(A) complete the draft environmental impact statement pursuant to section 102 (2)(C) of the National Environmental Policy Act and his determination under section 4(f) of the Department of Transportation Act and section 138 of title 23 of the United States Code, on the project for Interstate Route Numbered 66 in the State of Virginia from the National Capital Beltway to the Potomac River, which project is described in the 1972 estimate of the cost of completing the National System of Interstate and Defense Highways as estimate section termini E 10.4.2 at the Beltway to E 10.11.1 in Rosslyn,

(B) circulate such statement to all

interested Federal, State, and local agencies and to the public for comment within forty-five days, and

(C) insure that notice of a public hearing on the design and location of such project is issued;

(2) insure that a public hearing is held within forty-five days after issuance of the notice pursuant to paragraph (1)(C) of this subsection; and

(3) not later than December 31, 1973, complete consideration of the information received at the hearing, review any comments on the statement received within the forty-five-day notice period referred to in paragraph (1)(B) of this subsection and any other information received by the end of such forty-five-day period and file the final version of such statement on the basis of such comments and information, together with any other final determination which he is required by law to make in order to permit the construction of such project to proceed. The determination of the Secretary shall be conclusive with respect to all issues of fact.

13. Environmental Information; Office of Technology Assessment

2 U.S.C. 471–481

Sec.

§ 471. Congressional findings and declaration of purpose.

The Congress hereby finds and declares that:

(a) As technology continues to change and expand rapidly, its applications are—

(1) large and growing in scale; and

(2) increasingly extensive, pervasive, and critical in their impact, beneficial and adverse, on the natural and social environment.

(b) Therefore, it is essential that, to the fullest extent possible, the consequences of technological applications be anticipated, understood, and considered in determination of public policy on existing and emerging national problems.

(c) The Congress further finds that:

(1) the Federal agencies presently responsible directly to the Congress are not designed to provide the legislative branch with adequate and timely information, independently developed, relating to the potential impact of technological

applications, and

(2) the present mechanisms of the Congress do not and are not designed to provide the legislative branch with such information.

(d) Accordingly, it is necessary for the Congress to—

(1) equip itself with new and effective means for securing competent, unbiased information concerning the physical, biological, economic, social, and political effects of such applications; and

(2) utilize this information, whenever appropriate, as one factor in the legislative assessment of matters pending before the Congress, particularly in those instances where the Federal Government may be called upon to consider support for, or management or regulation of, technological applications.

(Pub. L. 92–484, § 2, Oct. 13, 1972, 86 Stat. 797.)

§ 472. Office of Technology Assessment.

(a) Creation.

In accordance with the findings and declaration of purpose in section 471 of this title, there is hereby created the Office of Technology Assessment (hereinafter referred to as the "Office") which shall be within and responsible to the legislative branch of the Government.

(b) Composition.

The Office shall consist of a Technology Assessment Board (hereinafter referred to as the "Board") which shall formulate and promulgate the policies of the Office, and a Director who shall carry out such policies and administer the operations of the Office.

(c) Functions and duties.

The basic function of the Office shall be to provide early indications of the probable beneficial and adverse impacts of the applications of technology and to develop other coordinate information which may assist the Congress. In carrying out such function, the Office shall:

(1) identify existing or probable impacts of technology or technological programs;

(2) where possible, ascertain cause-and-effect relationships;

(3) identify alternative technological methods of implementing specific programs;

(4) identify alternative programs for achieving requisite goals;

(5) make estimates and comparisons of the impacts of alternative methods and programs;

(6) present findings of completed analyses to the appropriate legislative authorities;

(7) identify areas where additional research or data collection is required to provide adequate support for the assessments and estimates described in paragraph (1) through (5) of this subsection; and

(8) undertake such additional associated activities as the appropriate authorities specified under subsection (d) of this section may direct.

(d) Initiation of assessment activities.

Assessment activities undertaken by the Office may be initiated upon the request of:

(1) the chairman of any standing, special, or select committee of either House of the Congress, or of any joint committee of the Congress, acting for himself or at the request of the ranking minority member or a majority of the committee members;

(2) the Board; or

(3) the Director, in consultation with the Board.

(e) Availability of information.

Assessments made by the Office, including information, surveys, studies, reports, and findings related thereto, shall be made available to the initiating committee or other appropriate committees of the Congress. In addition, any such information, surveys, studies, reports, and findings produced by the Office may be made available to the public except where—

(1) to do so would violate security statutes; or

(2) the Board considers it necessary or advisable to withhold such information in accordance with one or more of the numbered paragraphs in section 552(b) of Title 5.

(Pub. L. 92–484, § 3, Oct. 13, 1972, 86 Stat. 797.)

§ 473. Technology Assessment Board.

(a) Membership.

The Board shall consist of thirteen members as follows:

(1) six Members of the Senate, appointed by the President pro tempore of the Senate, three from the majority party and three from the minority party;

(2) six Members of the House of Representatives appointed by the Speaker of the House of Representatives, three from the majority party and three from the minority party; and

(3) the Director, who shall not be a voting member.

(b) Execution of functions during vacancies; filling of vacancies.

Vacancies in the membership of the Board shall not affect the power of the remaining members to execute the functions of the Board and shall be filled in the same manner as in the case of the original appointment.

(c) Chairman and vice chairman; selection procedure.

The Board shall select a chairman and a vice chairman from among its members at the beginning of each Congress. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. The chairmanship and the vice chairmanship shall alternate between the Senate and the House of Representatives with each Congress. The chairman during each even-numbered Congress shall be selected by the Members of the House of Representatives on the Board from among their number. The vice chairman during each Congress shall be chosen in the same manner from that House of Congress other than the House of Congress of which the chairman is a Member.

(d) Meetings; powers of Board.

The Board is authorized to sit and act at such

places and times during the sessions, recesses, and adjourned periods of Congress, and upon a vote of a majority of its members, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths and affirmations, to take such testimony, to procure such printing and binding, and to make such expenditures, as it deems advisable. The Board may make such rules respecting its organization and procedures as it deems necessary, except that no recommendation shall be reported from the Board unless a majority of the Board assent. Subpenas may be issued over the signature of the chairman of the Board or of any voting member designated by him or by the Board, and may be served by such person or persons as may be designated by such chairman or member. The chairman of the Board or any voting member thereof may administer oaths or affirmations to witnesses. (Pub. L. 92–484, § 4, Oct. 13, 1972, 86 Stat. 798).

§ 474. Director of Office of Technology Assessment.

(a) Appointment; term; compensation.

The Director of the Office of Technology Assesment shall be appointed by the Board and shall serve for a term of six years unless sooner removed by the Board. He shall receive basic pay at the rate provided for level III of the Executive Schedule under section 5314 of Title 5.

(b) Powers and duties.

In addition to the powers and duties vested in him by this chapter, the Director shall exercise such powers and duties as may be delegated to him by the Board.

(c) Deputy Director; appointment; functions; compensation.

The Director may appoint with the approval of the Board, a Deputy Director who shall perform such functions as the Director may prescribe and who shall be Acting Director during the absence or incapacity of the Director or in the event of a vacancy in the office of Director. The Deputy Director shall receive basic pay at the rate provided for level IV of the Executive Schedule under section 5315 of Title 5.

(d) Restrictions on outside employment activities of Director and Deputy Director.

Neither the Director nor the Deputy Director shall engage in any other business, vocation, or employment than that of serving as such Director or Deputy Director, as the case may be; nor shall the Director or Deputy Director, except with the approval of the Board, hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement under this chapter. (Pub. L. 92–484, § 5, Oct. 13, 1972, 86 Stat. 799.)

§ 475. Powers of Office of Technology Assessment.

(a) Use of public and private personnel and organizations; formation of special ad hoc task forces; contracts with governmental, etc., agencies and instrumentalities; advance, progress, and other payments; utilization of services of voluntary and uncompensated personnel; acquisition, holding, and disposal of real and personal property; promulgation of rules and regulations.

The Office shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this chapter, including, but without being limited to, the authority to—

(1) make full use of competent personnel and organizations outside the Office, public or private, and form special ad hoc task forces or make other arrangements when appropriate;

(2) enter into contracts or other arrangements as may be necessary for the conduct of the work of the Office with any agency or instrumentality of the United States, with any State, territory, or possession or any political subdivision thereof, or with any person, firm, association, corporation, or educational institution, with or without reimbursement, without performance or other bonds, and without regard to section 5 of Title 41;

(3) make advance, progress, and other payments which relate to technology assessment without regard to the provisions of section 529 of Title 31;

(4) accept and utilize the services of voluntary and uncompensated personnel necessary for the conduct of the work of the Office and provide transportation and subsistence as authorized by section 5703 of Title 5 for persons serving without compensation;

(5) acquire by purchase, lease, loan, or gift, and hold and dispose of by sale, lease, or loan, real and personal property of all kinds necessary for or resulting from the exercise of authority granted by this chapter; and

(6) prescribe such rules and regulations as it deems necessary governing the operation and organization of the Office.

(b) Recordkeeping by contractors and other parties entering into contracts and other arrangements with Office; availability of books and records to Office and Comptroller General for audit and examination.

Contractors and other parties entering into contracts and other arrangements under this section which involve costs to the Government shall maintain such books and related records as will facilitate an effective audit in such detail and in such manner as shall be prescribed by the Office, and such books and records (and related documents and papers) shall be available to the Office and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination.

(c) Operation of laboratories, pilot plants, or test facilities.

The Office, in carrying out the provisions of this chapter, shall not, itself, operate any laboratories, pilot plants, or test facilities.

(d) Requests to executive departments or agencies for information, suggestions, estimates, statistics, and technical assistance; duty of executive departments and agencies to furnish information, etc.

The Office is authorized to secure directly from any executive department or agency information, suggestions, estimates, statistics, and technical assistance for the purpose of carrying out its functions under this chapter. Each such executive department or agency shall furnish the information, suggestions, estimates, statistics, and technical assistance directly to the Office upon its request.

(e) Requests to heads of executive departments or agencies for detail of personnel; reimbursement.

On request of the Office, the head of any executive department or agency may detail, with or without reimbursement, any of its personnel to assist the Office in carrying out its functions under this chapter.

(f) Appointment and compensation of personnel.

The Director shall, in accordance with such policies as the Board shall prescribe, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter. (Pub. L. 92–484, § 6, Oct. 13, 1972, 86 Stat. 799.)

§ 476. Technology Assessment Advisory Council.

(a) Establishment; composition.

The Office shall establish a Technology Assessment Advisory Council (hereinafter referred to as the "Council"). The Council shall be composed of the following twelve members:

(1) ten members from the public, to be appointed by the Board, who shall be persons eminent in one or more fields of the physical, biological, or social sciences or engineering or experienced in the administration of technological activities, or who may be judged qualified on the basis of contributions made to educational or public activities;

(2) the Comptroller General; and

(3) the Director of the Congressional Research Service of the Library of Congress.

(b) Duties.

The Council, upon request by the Board, shall—

(1) review and make recommendations to the Board on activities undertaken by the Office or on the initiation thereof in accordance with section 472(d) of this title;

(2) review and make recommendations to the Board on the findings of any assessment made by or for the Office; and

(3) undertake such additional related tasks as the Board may direct.

(c) Chairman and Vice Chairman; election by Council from members appointed from public; terms and conditions of service.

The Council by majority vote, shall elect from its members appointed under subsection (a)(1) of this section a Chairman and a Vice Chairman, who shall serve for such time and under such conditions as the Council may prescribe. In the absence of the Chairman, or in the event of his incapacity, the Vice Chairman shall act as Chairman.

(d) Terms of office of members appointed from public; reappointment.

The term of office of each member of the Council appointed under subsection (a)(1) of this section shall be four years except that any such member appointed to fill a vacancy occuring prior to the expiration of the term for which his predecessor was appointed shall be appoinnted for the remainder of such term. No person shall be appointed a member of the Council under subsection (a)(1) of this section more than twice. Terms of the members appointed under subsection (a)(1) of this section shall be staggered so as to establish a rotating membership according to such method as the Board may devise.

(e) Payment to Comptroller General and Director of Congressional Research Service of travel and other necessary expenses; payment to members appointed from public of compensation and reimbursement for travel, subsistence, and other necessary expenses.

(1) The members of the Council other than those appointed under subsection (a)(1) of this section shall receive no pay for their services as members of the Council, but shall be allowed necessary travel expenses (or, in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence at not to exceed the rate prescribed in sections 5702 and 5704 of Title 5), and other necessary expenses incurred by them in the performance of duties vested in the Council, without regard to the provisions of subchapter 1 of chapter 57 and section 5731 of Title 5, and regulations promulgated thereunder.

(2) The members of the Council appointed under subsection (a)(1) shall receive compensation for each day engaged in the actual performance of duties vested in the Council at rates of pay not in excess of the daily equivalent of the highest rate of basic pay set forth in the General Schedule of section 5332(a) of Title 5, and in addition shall be reimbursed for travel, subsistence, and other necessary expenses in the manner provided for other members of the Council under paragraph (1) of this subsection. (Pub. L. 92–484, § 7, Oct. 13, 1972, 86 Stat. 800.)

§ 477. Utilization of services of Library of Congress.

(a) Authority of Librarian to make available services and assistance of Congressional Research Service.

To carry out the objectives of this chapter, the Librarian of Congress is authorized to make available to the Office such services and assistance of the Congressional Research Service as may be appropriate and feasible.

(b) Scope of services and assistance.

Such services and assistance made available to the Office shall include, but not be limited to, all of the services and assistance which the Congressional Research Service is otherwise authorized to provide to the Congress.

(c) Services or responsibilities performed by Congressional Research Service for Congress not altered or modified; authority of Librarian to establish within Congressional Research Service additional divisions, etc.

Nothing in this section shall alter or modify any services or responsibilities, other than those performed for the Office, which the Congressional Research Service under law performs for or on behalf of the Congress. The Librarian is, however, authorized to establish within the Congressional Research Service such additional divisions, groups, or other organizational entities as may be necessary to carry out the purpose of this chapter.

(d) Reimbursement for services and assistance.

Services and assistance made available to the Office by the Congressional Research Service in accordance with this section may be provided with or without reimbursement from funds of the Office, as agreed upon by the Board and the Librarian of Congress. (Pub. L. 92–484, § 8, Oct. 13, 1972, 86 Stat. 801.)

§ 478. Utilization of services of General Accounting Offices.

(a) Authority of General Accounting Office to furnish financial and administrative services.

Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) and such other services as may be appropriate shall be provided the Office by the General Accounting Office.

(b) Scope of services and assistance.

Such services and assistance to the Office shall include, but not be limited to, all of the services and assistance which the General Accounting Office is otherwise authorized to provide to the Congress.

(c) Services or responsibilities performed by General Accounting Office for Congress not altered or modified.

Nothing in this section shall alter or modify any services or responsibilities, other than those performed for the Office, which the General Accounting Office under law performs for or on behalf of the Congress.

(d) Reimbursement for services and assistance.

Services and assistance made available to the Office by the General Accounting Office in accordance with this section may be provided with or without reimbursement from funds of the Office, as agreed upon by the Board and the Comptroller General. (Pub. L. 92–484, § 9, Oct. 13, 1972, 86 Stat. 802.)

§ 479. Coordination of activities with National Science Foundation.

The Office shall maintain a continuing liaison with the National Science Foundation with respect to—

(1) grants and contracts formulated or activated by the Foundation which are for purposes of technology assessment; and

(2) the promotion of coordination in areas of technology assessment, and the avoidance of unnecessary duplication or overlapping of research activities in the development of technology assessment techniques and programs.

(Pub. L. 92–484, § 10(a), Oct. 13, 1972, 86 Stat. 802.)

§ 480. Annual report to Congress.

The Office shall submit to the Congress an annual report which shall include, but not be limited to, an evaluation of technology assessment technique and identification, insofar as may be feasible, of technological areas and programs requiring future analysis. Such report shall be submitted not later than March 15 of each year. (Pub. L. 92–484, § 11, Oct. 13, 1972, 86 Stat. 802.)

§ 481. Authorization of appropriations; availability of appropriations.

(a) To enable the Office to carry out its powers and duties, there is hereby authorized to be appropriated to the Office, out of any money in the Treasury not otherwise appropriated, not to exceed $5,000,000 in the aggregate for the two fiscal years ending June 30, 1973, and June 30, 1974, and thereafter such sums as may be necessary.

(b) Appropriations made pursuant to the authority provided in subsection (a) of this section shall remain available for obligation, for expenditure, or for obligation and expenditure for such period or periods as may be specified in the Act making such appropriations. (Pub. L. 92–484, § 12, Oct. 13, 1972, 86 Stat. 803.)

14. Environmental Pesticide Control

7 U.S.C. 136–136y

Sec.

§ 136. Definitions.

For purposes of this subchapter—

(a) Active ingredient.

The term "active ingredient" means—

(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(b) Administrator.

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(c) Adulterated.

The term "adulterated" applies to any pesticide if:

(1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold;

(2) any substance has been substituted wholly or in part for the pesticide; or

(3) any valuable constituent of the pesticide has been wholly or in part abstracted.

(d) Animal.

The term "animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(e) Certified applicator, etc.

(1) Certified applicator.

The term "certified applicator" means any individual who is certified under section 136b of this title as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(2) Private applicator.

The term "private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(3) Commercial applicator.

The term "commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses

or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

(4) Under the direct supervision of a certified applicator.

Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(f) Defoliant.

The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(g) Desiccant.

The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(h) Device.

The term "device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(i) District court.

The term "district court" means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

(j) Environment.

The term "environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(k) Fungus.

The term "fungus" means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(*l*) Imminent hazard.

The term "imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered or threatened by the Secretary pursuant to the Endangered Species Act of 1973.

(m) Inert ingredient.

The term "inert ingredient" means an ingredient which is not active.

(n) Ingredient statement.

The term "ingredient statement" means a statement which contains—

(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

(2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

(*o*) Insect.

The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(p) Label and labeling.

(1) Label.

The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(2) Labeling.

The term "labeling" means all labels and all other written, printed, or graphic matter—

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

(q) Misbranded.

(1) A pesticide is misbranded if—

(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 136w(c)(3) of this title;

(C) it is an imitation of, or is offered for sale under the name of, another pesticide;

(D) its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced;

(E) any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment;

(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment.

(2) A pesticide is misbranded if—

(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

(i) the size of form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

(B) the labeling does not contain a statement of the use classification under which the product is registered;

(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(i) the name and address of the producer, registrant, or person for whom produced;

(ii) the name, brand, or trademark under which the pesticide is sold;

(iii) the net weight or measure of the content: *Provided,* That the Administrator may permit reasonable variations; and

(iv) when required by regulation of the Administrator to effectuate the purposes of this subchapter, the registration number assigned to the pesticide under this subchapter, and the use classification; and

(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this subchapter—

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(r) Nematode.

The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

(s) Person.

The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(t) Pest.

The term "pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.

(u) Pesticide.

The term "pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant: *Provided,* That the term "pesticide" shall not include any article (1) (a) that is a "new animal drug" within the meaning of section 321(w) of Title 21, or (b) that has been determined by the Secretary of Health, Education, and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of section 321(x) of Title 21 bearing or containing an article covered by clause (1) of this proviso.

(v) Plant regulator.

The term "plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term "plant regulator" shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

(w) Producer and produce.

The term "producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term "produce" means to manufacture, prepare, compound, propagate, or process any pesticide or device.

(x) Protect health and the environment.

The terms "protect health and the environment" and "protection of health and the environment" mean protection against any unreasonable adverse effects on the environment.

(y) Registrant.

The term "registrant" means a person who has registered any pesticide pursuant to the provisions of this subchapter.

(z) Registration.

The term "registration" includes reregistration.

(aa) State.

The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

(bb) Unreasonable adverse effects on the environment.

The term "unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(cc) Weed.

The term "weed" means any plant which grows where not wanted.

(dd) Establishment.

The term "establishment" means any place where a pesticide or device is produced, or held, for distribution or sale. (June 25, 1947, ch. 125, § 2, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 976, and amended Dec. 28, 1973, Pub. L. 93–205, § 13(f), 87 Stat. 903; Nov. 28, 1975, Pub. L. 94–140, § 9, 89 Stat. 754.)

AMENDMENTS

1975—Subsec. (u). Pub. L. 94–140 added proviso which excluded from the term "pesticide" any article designated as "new animal drug" and any article denominated as animal feed.

1973—Subsec. (*l*). Pub. L. 93–205 substituted "or threatened by the Secretary pursuant to the Endangered Species Act of 1973" for "by the Secretary of the Interior under Public Law 91–135".

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

§ 136a. Registration of pesticides.

(a) Requirement.

Except as otherwise provided by this subchapter, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.

(b) Exemptions.

A pesticide which is not registered with the Administrator may be transferred if—

(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

(c) Procedure for registration.

(1) Statement required.

Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

(B) the name of the pesticide;

(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;

(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, except that data submitted on or after January 1, 1970, in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration unless such other applicant shall have first offered to pay reasonable compensation for producing the test data to be relied upon and such data is not protected from disclosure by section 136h(b) of this title. This provision with regard to compensation for producing the test data to be relied upon shall apply with respect to all applications for registration or reregistration submitted on or after October 21, 1972. If the parties cannot agree on the amount and method of payment, the Administrator shall make such determination and may fix such other terms and conditions as may be reasonable under the circumstances. The Administrator's determination shall be made on the record after notice and opportunity for hearing. If either party does not agree with said determination, he may, within thirty days, take an appeal to the Federal district court for the district in which he resides with respect to either the amount of the payment or the terms of payment, or both. Registration shall not be delayed pending the determination of reasonable compensation between the applicants, by the Administrator or by the court.

(E) the complete formula of the pesticide; and

(F) a request that the pesticide be classified for general use, for restricted use, or for both.

(2) Data in support of registration.

The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c)(1)(D) of this section and section 136h of this title, within 30 days after the Administrator registers a pesticide under this subchapter he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

(3) Time for acting with respect to application.

The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the subchapter in accordance with paragraph (6).

(4) Notice of application.

The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

(5) Approval of registration.

The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d) of this section—

(A) its composition is such as to warrant the proposed claims for it;

(B) its labeling and other material required to be submitted comply with the requirements of this subchapter;

(C) it will perform its intended function without unreasonable adverse effects on the environment; and

(D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other.

(6) Denial of registration.

If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator may refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. The Administrator shall promptly publish in the Federal Register notice of such denial of registration and the reasons therefor. Upon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 136d of this title.

(d) Classification of pesticides.

(1) Classification for general use, restricted use, or both.

(A) As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses: *Provided, however*, That the Administrator may require that its packaging and labeling for restricted uses shall be clearly distinguishable from its packaging and labeling for general uses.

(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, for general use.

(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use:

(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause unreasonable adverse effects on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation. Any such regulation shall be reviewable in the appropriate court of appeals upon petition of a per-

son adversely affected filed within 60 days of the publication of the regulation in final form.

(2) Change in classification.

If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent unreasonable adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register. The registrant, or other interested person with the concurrence of the registrant, may seek relief from such determination under section 136d(b) of this title.

(e) Products with same formulation and claims.

Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added to the registration by supplemental statements.

(f) Miscellaneous.

(1) Effect of change of labeling or formulation.

If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this subchapter.

(2) Registration not a defense.

In no event shall registration of an article be construed as a defense for the commission of any offense under this subchapter: *Provided*, That as long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of the subchapter.

(3) Authority to consult other federal agencies.

In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

(June 25, 1947, ch. 125, § 3, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 979, and amended Nov. 28, 1975, Pub. L. 94–140, § 12, 89 Stat. 755.)

AMENDMENTS

1975—Subsec. (c)(1)(D). Pub. L. 94–140 added exception relating to test data submitted on or after January 1, 1970, in support of application, added provision that compensation for producing test data shall apply to all applications submitted on or after October 21, 1972, and provision relating to delay of registration pending determination of reasonable compensation, struck out requirement that payment determined by court not be less than amount determined by Administrator, and substituted "'If either party" for "'If the owner of the test data".

§ 136b. Use of restricted use pesticides; certified applicators.

(a) Certification procedure.

(1) Federal certification.

Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual's certification: *Provided, however*, That the certification standard for a private applicator shall, under a State plan submitted for approval, be deemed fulfilled by his completing a certification form. The Administrator shall further assure that such form contains adequate information and affirmations to carry out the intent of this subchapter, and may include in the form an affirmation that the private applicator has completed a training program approved by the Administrator so long as the program does not require the private applicator to take, pursuant to a requirement prescribed by the Administrator, any examination to establish competency in the use of the pesticide. The Administrator may require any pesticide dealer participating in a certification program to be licensed under a State licensing program approved by him.

(2) State certification.

If any State, at any time, desires to certify applicators of pesticides, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

(A) designates a State agency as the agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1).

Any State certification program under this section shall be maintained in accordance with the State plan approved under this section.

(b) State plans.

If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify applicators of pesticides with respect to such State. Whenever the Administrator determines that a State is not administering the certification program in accordance with the plan approved under this section, he shall so notify the State and provide for a hearing at the request of

the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such plan.

(c) Instruction in integrated pest management techniques.

Standards prescribed by the Administrator for the certification of applicators of pesticides under subsection (a) of this section, and State plans submitted to the Administrator under subsections (a) and (b) of this section, shall include provisions for making instructional materials concerning integrated pest management techniques available to individuals at their request in accordance with the provisions of section 136u(c) of this title, but such plans may not require that any individual receive instruction concerning such techniques or be shown to be competent with respect to the use of such techniques. The Administrator and States implementing such plans shall provide that all interested individuals are notified of the availability of such instructional materials. (June 25, 1947, ch. 125, § 4, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 933, and amended Nov. 28, 1975, Pub. L. 94–140, §§ 5, 11, 89 Stat. 753, 754.)

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94–140, § 5, added proviso relating to Administrator's powers and duties with respect to the certification forms and requirement for pesticide dealers participating in certification program. Subsec. (c). Pub. L. 94–140, § 11, added subsec. (c).

§ 136c. Experimental use permits.

(a) Issuance.

Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 136a of this title. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

(b) Temporary tolerance level.

If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

(c) Use under permit.

Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

(d) Studies.

When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause unreasonable adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 136a of this title.

(e) Revocation.

The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(f) State issuance of permits.

Notwithstanding the foregoing provisions of this section, the Administrator may, under such terms and conditions as he may by regulations prescribe, authorize any State to issue an experimental use permit for a pesticide. All provisions of section 136b of this title relating to State plans shall apply with equal force to a State plan for the issuance of experimental use permits under this section.

(g) Exemption for agricultural research agencies.

Notwithstanding the foregoing provisions of this section, the Administrator may issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit. Each permit shall not exceed more than a one-year period or such other specific time as the Administrator may prescribe. Such permit shall be issued under such terms and conditions restricting the use of the pesticide as the Administrator may require: *Provided,* That such pesticide may be used only by such research agency or educational institution for purposes of experimentation. (June 25, 1947, ch. 125, § 5, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 983, and amended Nov. 28, 1975, Pub. L. 94–140, § 10, 89 Stat. 754.)

AMENDMENTS

1975—Subsec. (g). Pub. L. 94–140 added subsec. (g).

§ 136d. Administrative review; suspension.

(a) Cancellation after five years.

(1) Procedure.

The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five year period thereafter) unless the registrant, or other interested person with the concurrence of the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect: *Provided,* That the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is canceled under this subsection or subsection (b) of this section to such extent, under such conditions, and for such uses as he may specify if he determines that such sale or use is not inconsistent with the purposes of this subchapter and will not have unreasonable adverse effects on the environment. The Administrator shall publish in the Federal Register, at least 30 days prior to the expiration of such five-year period, notice that the registration will be canceled if the registrant or other interested person with the concurrence of the registrant does not request that the registration be continued in effect.

(2) Information.

If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

(b) Cancellation and charge in classification.

If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this subchapter or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of his intent either—

(1) to cancel its registration or to change its classification together with the reasons (including the factual basis) for his action, or

(2) to hold a hearing to determine whether or not its registration should be canceled or its classification changed.

Such notice shall be sent to the registrant and made public. In determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day time requirement. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary. Notwithstanding any other provision of this subsection and section 136w(d) of this title, in the event that the Administrator determines that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, then upon such a finding the Administrator may waive the requirement of notice to and consultation with the Secretary of Agriculture pursuant to this subsection and of submission to the Scientific Advisory Panel pursuant to section 136w(d) of this title and proceed in accordance with subsection (c) of this section. The proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs later, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice. In the event a hearing is held pursuant to such a request or to the Administrator's determination under paragraph (2), a decision pertaining to registration or classification issued after completion of such hearing shall be final. In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and he shall publish in the Federal Register an analysis of such impact.

(c) Suspension.

(1) Order.

If the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless the Administrator has issued or at the same time issues notice of his intention to cancel the registration or change the classification of the pesticide.

Except as provided in paragraph (3), the Administrator shall notify the registrant prior to issuing any suspension order. Such notice shall include findings pertaining to the question of "imminent hazard". The registrant shall then have an opportunity, in accordance with the provisions of paragraph (2), for an expedited hearing before the Agency on the question of whether an imminent hazard exists.

(2) Expedite hearing.

If no request for a hearing is submitted to the Agency within five days of the registrant's receipt of the notification provided for by paragraph (1), the suspension order may be issued and shall take effect and shall not be reviewable by a court. If a hearing is requested, it shall commence within five days of the receipt of the request for such hearing unless the registrant and the Agency agree that it shall commence at a later time. The hearing shall be held in accordance with the provisions of subchapter II of chapter 5 of Title 5, except that the presiding officer need not be a certified hearing examiner. The presiding officer shall have ten days from the conclusion of the presentation of evidence to submit recommended findings and conclusions to the Administrator, who shall then have seven days to render a final order on the issue of suspension.

(3) Emergency order.

Whenever the Administrator determines that an emergency exists that does not permit him to hold a hearing before suspending, he may issue a suspension order in advance of notification to the registrant. In that case, paragraph (2) shall apply except that (i) the order of suspension shall be in effect pending the expeditious completion of the remedies provided by that paragraph and the issuance of a final order on suspension, and (ii) no party other than the registrant and the Agency

shall participate except that any person adversely affected may file briefs within the time allotted by the Agency's rules. Any person so filing briefs shall be considered a party to such proceeding for the purposes of section 136n(b) of this title.

(4) Judicial review.

A final order on the question of suspension following a hearing shall be reviewable in accordance with section 136n of this title, notwithstanding the fact that any related cancellation proceedings have not been completed. Petitions to review orders on the issue of suspension shall be advanced on the docket of the courts of appeals. Any order of suspension entered prior to a hearing before the Administrator shall be subject to immediate review in an action by the registrant or other interested person with the concurrence of the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending the Administrator's final decision with respect to cancellation or change in classification. This action may be maintained simultaneously with any administrative review proceeding under this section. The commencement of proceedings under this paragraph shall not operate as a stay of order, unless ordered by the court.

(d) Public hearings and scientific review.

In the event a hearing is requested pursuant to subsection (b) of this section or determined upon by the Administrator pursuant to subsection (b) of this section, such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony or production of documents from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, the subpena may be enforced by an appropriate United States district court in accordance with the principles stated herein. Upon the request of any party to a public hearing and when in the Hearing Examiner's judgment it is necessary or desirable, the Hearing Examiner shall at any time before the hearing record is closed refer to a Committee of the National Academy of Sciences the relevant questions of scientific fact involved in the public hearing. No member of any committee of the National Academy of Sciences established to carry out the functions of this section shall have a financial or other conflict of interest with respect to any matter considered by such committee. The Committee of the National Academy of Sciences shall report in writing to the Hearing Examiner within 60 days after such referral on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this subchapter. As soon as practicable after completion of the hearing (including the report of the Academy) but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either canceling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

(e) Judicial review.

Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 136n of this title. (June 25, 1947, ch. 125, § 6, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 984, and amended Nov. 28, 1975, Pub. L. 94–140, § 1, 89 Stat. 751.)

CODIFICATION

"Subchapter II of chapter 5 of Title 5", referred to in the text, was in the original "subchapter II of Title 5", and has been editorially changed as the probable intent of Congress.

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–140 established criteria which Administrator must use in determining the issuance of a suspension of registration notice and the time periods relating to such notice, set forth required procedures to be followed by Administrator prior to publication of such notice, required procedures when the Secretary elects to comment or fails to comment on suspension notice, waiver or modification of time periods in specified required procedures, required procedures for waiver of notice and consent by Secretary for suspension of registration, and established criteria for Secretary taking any final action.

§ 136e. Registration of establishments.

(a) Requirement.

No person shall produce any pesticide subject to this subchapter in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

(b) Registration.

Whenever the Administrator receives an application under subsection (a) of this section, he shall register the establishment and assign it an establishment number.

(c) Information required.

(1) Any producer operating an establishment registered under this section shall inform the Ad-

ministrator within 30 days after it is registered of the types and amounts of pesticides—

(A) which he is currently producing;

(B) which he has produced during the past year; and

(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 136k of this section, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

(d) Confidential records and information.

Any information submitted to the Administrator pursuant to subsection (c) of this section shall be considered confidential and shall be subject to the provisions of section 136h of this ttile. (June 25, 1947, ch. 125, § 7, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 987.)

§ 136f. Books and records.

(a) Requirements.

The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this subchapter. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

(b) Inspection.

For the purposes of enforcing the provisions of this subchapter, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this subchapter, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device. Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed). (June 25, 1947, ch. 125, § 8, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 987.)

§ 136g. Inspection of establishments, etc.

(a) In general.

For purposes of enforcing the provisions of this subchapter, officers or employees duly designated by the Administrator are authorized to enter at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) Warrants.

For purposes of enforcing the provisions of this subchapter and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this subchapter have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

(1) entry for the purpose of this section;

(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide) or otherwise in violation of this subchapter and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

(3) the seizure of any pesticide or device which is in violation of this subchapter.

(c) Enforcement.

(1) Certification of facts to Attorney General.

The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this subchapter. If it shall appear from any such examination that they fail to comply with the requirements of this subchapter, the Administrator shall cause notice to be given to the person against whom criminal or civil proceedings are contemplated. Any person so notified

shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this subchapter have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 136*l*(b) of this title or a civil proceeding under section 136*l*(a) of this title, when the Administrator determines that such action will be sufficient to effectuate the purposes of this subchapter.

(2) Notice not required.

The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

(3) Warning notices.

Nothing in this subchapter shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this subchapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(June 25, 1947, ch. 125, § 9, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 988.)

§ 136h. Protection of trade secrets and other information.

(a) In general.

In submitting data required by this subchapter, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information and (2) submit such marked material separately from other material required to be submitted under this subchapter.

(b) Disclosure.

Notwithstanding any other provisions of this subchapter, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this subchapter, information relating to formulas of products acquired by authorization of this subchapter may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

(c) Disputes.

If the Administrator proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b) of this section, he shall notify the applicant or registrant, in writing, by certified mail. The Administrator shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate district court for a declaratory judgment as to whether such information is subject to protection under subsection (b) of this section. (June 25, 1947, ch. 125, § 10, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 989.)

§ 136i. Standards applicable to pesticide applicators.

(a) In general.

No regulations prescribed by the Administrator for carrying out the provisions of this subchapter shall require any private applicator to maintain any records or file any reports or other documents.

(b) Separate standards.

When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators. (June 25, 1947, ch. 125, § 11, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 989.)

§ 136j. Unlawful acts.

(a) In general.

(1) Except as provided by subsection (b) of this section, it shall be unlawful for any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—

(A) any pesticide which is not registered under section 136a of this title, except as provided by section 136d(a)(1) of this title;

(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 136a of this title;

(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 136a of this title;

(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 136w(c)(5) of this title;

(E) any pesticide which is adulterated or misbranded; or

(F) any device which is misbranded.

(2) It shall be unlawful for any person—

(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this subchapter;

(B) to refuse to keep any records required pursuant to section 136f of this title, or to refuse to allow inspection of any records or establishment pursuant to section 136f or 136g of this title, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 136g of this title;

(C) to give a guaranty or undertaking provided for in subsection (b) of this section which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) of this section may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name

and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

(D) to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this subchapter which is confidential under this subchapter;

(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this subchapter for restricted use without giving the classification of the product assigned to it under section 136a of this title;

(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 136a(d) of this title and any regulations thereunder;

(G) to use any registered pesticide in a manner inconsistent with its labeling;

(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

(I) to violate any order issued under section 136k of this title;

(J) to violate any suspension order issued under section 136d of this title;

(K) to violate any cancellation of registration of a pesticide under section 136d of this title, except as provided by section 136d(a)(1) of this title;

(L) who is a producer to violate any of the provisions of section 136e of this title;

(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 136e of this title, any records required to be maintained pursuant to section 136f of this title, any report filed under this subchapter, or any information marked as confidential and submitted to the Administrator under any provision of this subchapter;

(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this subchapter;

(O) to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this subchapter; or

(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test.

(b) Exemptions.

The penalties provided for a violation of paragraph (1) of subsection (a) of this section shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this subchapter, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this subchapter;

(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

(3) any public official while engaged in the performance of his official duties;

(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

(June 25, 1947, ch. 125, § 12, as added Oct. 21, 1972, Pub. L. 92-516, § 2, 86 Stat. 989.)

§ 136k. Stop sale, use, removal, and seizure.

(a) Stop sale, etc., orders.

Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this subchapter, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Administrator may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

(b) Seizure.

Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—

(1) in the case of a pesticide—

(A) it is adulterated or misbranded;

(B) it is not registered pursuant to the provisions of section 136a of this title;

(C) its labeling fails to bear the information required by this subchapter;

(D) it is not colored or discolored and such coloring or discoloring is required under this subchapter; or

(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

(2) in the case of a device, it is misbranded; or

(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this subchapter and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

(c) Disposition after condemnation.

If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this subchapter or the laws of the jurisdiction in which it is sold: *Provided*, That upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the subchapter or the laws of any jurisdiction in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(d) Court costs, etc.

When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device. (June 25, 1947, ch. 125, § 13, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 991.)

§ 136*l*. Penalties.

(a) Civil penalties.

(1) In general.

Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

(2) Private applicator.

Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense.

(3) Hearing.

No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

(4) References to Attorney General.

In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

(b) Criminal penalties.

(1) In general.

Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this subchapter shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

(2) Private applicator.

Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this subchapter shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

(3) Disclosure of information.

Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 136a of this title, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

(4) Acts of officers, agents, etc.

When construing and enforcing the provisions of this subchapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

(June 25, 1947, ch. 125, § 14, as added Oct. 21, 1972, Pub L. 92–516, § 2, 86 Stat. 992.)

§ 136m. Indemnities.

(a) Requirement.

If—

(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an

imminent hazard;

(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration,

the Administrator shall make an indemnity payment to such person, unless the Administrator finds that such person (i) had knowledge of facts which, in themselves, would have shown that such pesticide did not meet the requirements of section 136a(c)(5) of this title for registration, and (ii) continued thereafter to produce such pesticide without giving timely notice of such facts to the Administrator.

(b) Amount of payment.

(1) In general.

The amount of the indemnity payment under subsection (a) of this section to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a)(1) of this section; except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1) of this section.

(2) Special rule.

Notwithstanding any other provision of this subchapter the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

(June 25, 1947, ch. 125, § 15, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 993.)

§ 136n. Administrative procedure; judicial review.

(a) District court review.

Except as is otherwise provided in this subchapter, Agency refusals to cancel or suspend registrations or change classifications not following a hearing and other final Agency actions not committed to Agency discretion by law are judicially reviewable in the district courts.

(b) Review by court of appeals.

In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any person who will be adversely affected by such order and who had been a party to the proceedings may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

(c) Jurisdiction of district courts.

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this subchapter.

(d) Notice of judgments.

The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this subchapter. (June 25, 1947, ch. 125, § 16, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 994.)

§ 136o. Imports and exports.

(a) Pesticides and devices intended for export.

Notwithstanding any other provision of this subchapter, no pesticide or device shall be deemed in violation of this subchapter when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices shall be subject to section 136 of this title.

(b) Cancellation notices furnished to foreign governments.

Whenever a registration, or a cancellation or suspension of the registration of a pesticide becomes effective, or ceases to be effective, the Administrator shall transmit through the State Department notification thereof to the governments of other countries and to appropriate international agencies.

(c) Importation of pesticides and devices.

The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this subchapter, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any pesticide or device refused de-

livery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further,* That all charges for storage, cartage, and labor on pesticides or devices which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

(d) Cooperation in international efforts.

The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

(e) Regulations.

The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of subsection (c) of this section. (June 25, 1947, ch. 125, § 17, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 995.)

§ 136p. Exemption of Federal agencies.

The Administrator may, at his discretion, exempt any Federal or State agency from any provision of this subchapter if he determines that emergency conditions exist which require such exemption. The Administrator, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination. (June 25, 1947, ch. 125, § 18, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 995, and amended Nov. 28, 1975, Pub. L. 94–140, § 8, 89 Stat. 754.)

AMENDMENTS

1975—Pub. L. 94–140 added provision requiring Administrator to consult with Secretary of Agriculture and Governor of State concerned in determining whether an emergency situation exists.

§ 136q. Disposal and transportation.

(a) Procedures.

The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 136d(c) of this title if requested by the owner of the pesticide.

(b) Advice to secretary of transportation.

The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act, the Transportation of Explosives Act, the Federal Aviation Act of 1958, and the Hazardous Cargo Act. (June 25, 1947, ch. 125, § 19, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 995.)

§ 136r. Research and monitoring.

(a) Research.

The Administrator shall undertake research including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this subchapter, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

(b) National monitoring plan.

The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

(c) Monitoring.

The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this subchapter and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies. (June 25, 1947, ch. 125, § 20, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 996.)

§ 136s. Solicitation of comments; notice of public hearings.

(a) The Administrator, before publishing regulations under this subchapter, shall solicit the views of the Secretary of Agriculture in accordance with the procedure described in section 136w(a) of this title.

(b) In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this subchapter, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

(c) In connection with all public hearings under this subchapter the Administrator shall publish timely notice of such hearings in the Federal Register. (June 25, 1947, ch. 125, § 21, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 996, and amended Nov. 28, 1975, Pub. L. 94–140, § 2(b), 89 Stat. 752.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–140 added "in accordance with the procedure described in section 136w(a) of this title" following "Secretary of Agriculture".

§ 136t. Delegation and cooperation.

(a) Delegation.

All authority vested in the Administrator by virtue of the provisions of this subchapter may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

(b) Cooperation.

The Administrator shall cooperate with Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this subchapter, and in securing uniformity of regulations. (June 25, 1947, ch. 125, § 22, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 996.)

§ 136u. State cooperation, aid, and training.

(a) Cooperative agreements.

The Administrator is authorized to enter into cooperative agreement with States—

(1) to delegate to any State the authority to cooperate in the enforcement of the subchapter through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this subchapter, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

(2) to assist State agencies in developing and administering State programs for training and certification of applicators consistent with the standards which he prescribes.

(b) Contracts for training.

In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified applicators.

(c) The Administrator may, in cooperation with the Secretary of Agriculture, utilize the services of the Cooperative State Extension Services for informing farmers of accepted uses and other regulations made pursuant to this subchapter. (June 25, 1947, ch. 125, § 23, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 996.)

§ 136v. Authority of States.

(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter;

(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this subchapter; and

(c) a State may provide registration for pesticides formulated for distribution and use within that State to meet special local needs if that State is certified by the Administrator as capable of exercising adequate controls to assure that such registration will be in accord with the purposes of this subchapter and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator. Such registration shall be deemed registration under section 136a of this title for all purposes of this subchapter, but shall authorize distribution and use only within such State and shall not be effective for more than 90 days if disapproved by the Administrator within that period. (June 25, 1947, ch. 125, § 24, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 997.)

§ 136w. Authority of Administrator.

(a) Regulations.

(1) Authorization.

The Administrator is authorized, in accordance with the procedure described in paragraph (2), to prescribe regulations to carry out the provisions of this subchapter. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

(2) Procedure.

(A) Proposed regulations.

At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.

(B) Final regulations.

At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement.

(C) Time requirements.

The time requirements imposed by subparagraphs (A) and (B) may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

(D) Publication in the Federal Register.

The Administrator shall, simultaneously with any notification to the Secretary of Agriculture under this paragraph prior to the issuance of any proposed or final regulation, publish such notification in the Federal Register.

(3) Congressional committees.

At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secertary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate.

(b) Exemption of pesticides.

The Administrator may exempt from the requirements of this subchapter by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this subchapter in order to carry out the purposes of this subchapter.

(c) Other authority.

The Administrator, after notice and opportunity for hearing, is authorized—

(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this subchapter as well as to accomplish the other purposes of this subchapter;

(4) to specify those classes of devices which shall be subject to any provision of paragraph 2(q)(1) or section 136e of this title upon his determination that application of such provision is necessary to effectuate the purposes of this subchapter;

(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

(6) to determine and establish suitable names to be used in the ingredient statement.

(d) Scientific advisory panel.

The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 136d(b) of this title and of the proposed and final form of regulations issued under subsection (a) of this section within the same time periods as provided for the comments of the Secretary of Agriculture under such section 136d(b) and subsection (a) of this section. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 136d(b) of this title or subsection (a) of this section, as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver. The comments of the advisory panel and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such section 136d(b) and subsection (a) of this section. The panel referred to in this subsection shall consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institutes of Health, and six by the National Science Foundation. The Administrator may require such information from the nominees to the advisory panel as he deems necessary, and he shall publish in the Federal Register the name, address, and professional affiliations of each nominee. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS–18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection. In order to assure the objectivity of the advisory panel, the Administrator shall promulgate regulations regarding conflicts of interest with respect to the members of the panel. (June 25, 1947, ch. 125, § 25, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 997, and amended Nov. 28, 1975, Pub. L. 94–140, §§ 2(a), 6, 7, 89 Stat. 751, 753.)

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94–140, § 2(a) (1), (2), redesignated existing provision as subsec. (a)(1), and, as so redesignated, added ", in accordance with the procedure described in paragraph (2)," following "is authorized".

Subsec. (a)(2). Pub. L. 94–140, § 2(a)(3), added subsec. (a)(2).

Subsec. (a)(3). Pub. L. 94–140, § 6, added subsec. (a)(3).

Subsec. (d). Pub. L. 94–140, § 7, added subsec. (d).

§ 136x. Severability.

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter are severable. (June 25, 1947, ch. 125, § 26, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 998.)

§ 136y. Authorization for appropriations.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter for each of the fiscal years ending June 30, 1972, June 30, 1974, and June 30, 1975. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1975, shall be the sums hereafter provided by law. There is hereby authorized to be appropriated to carry out the provisions of this subchapter for the period beginning July 1, 1975, and ending September 30, 1975, the sum of

$11,967,000. There is hereby authorized to be appropriated to carry out the provisions of this subchapter for the period beginning October 1, 1975, and ending November 15, 1975, the sum of $5,983,500. There are hereby authorized to be appropriated to carry out the provisions of this subchapter for the period beginning October 1, 1975, and ending September 30, 1976, the sum of $47,868,000, and for the period beginning October 1, 1976, and ending March 31, 1977, the sum of $23,600,000. (June 25, 1947, ch. 125, § 27, as added Oct. 21, 1972, Pub. L. 92–516, § 2, 86 Stat. 998, and amended July 2, 1975, Pub. L. 94–51, 89 Stat. 257; Oct. 10, 1975, Pub. L. 94–109, 89 Stat. 571; Nov. 28, 1975, Pub. L. 94–140, § 3, 89 Stat. 752.)

AMENDMENTS

1975—Pub. L. 94–140 authorized the appropriation of $47,868,000 to carry out the provisions of this subchapter for the period beginning October 1, 1975, and ending September 30, 1976, and $23,600,000 for period beginning October 1, 1976, and ending March 31, 1977.

Pub. L. 94–109 added provisions authorizing appropriation of $5,983,500 for the period beginning October 1, 1975 and ending November 15, 1975.

Pub. L. 94–51 authorized the appropriation of $11,967,000 to carry out the provisions of this subchapter for the period beginning July 1, 1975, and ending September 30, 1975.

15. Environmental Pollution at Federal Facilities

Ex. Order 11752, 38 F.R. 34793

(See Ex. Order 11752 under title III *Executive Orders*)

16. Environmental Pollution Study

42 U.S.C. 4391–4395

Sec.

§ 4391. Congressional statement of findings.

The Congress finds that there is general agreement that air, water, and other common environmental pollution may be hazardous to the health of individuals resident in the United States, but that despite the existence of various research papers and other technical reports on the health hazards of such pollution, there is no authoritative source of information about (1) the nature and gravity of these hazards, (2) the availability of medical and other assistance to persons affected by such pollution, especially when such pollution reaches emergency levels, and (3) the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals. (Pub. L. 91–515, title V, § 501(a), Oct. 30, 1970, 84 Stat. 1309.)

§ 4392. Presidential study.

The President shall immediately commence (1) a study of the nature and gravity of the hazards to human health and safety created by air, water, and other common environmental pollution, (2) a survey of the medical and other assistance available to persons affected by such pollution, especially when such pollution reaches emergency levels, and (3) a survey of the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals. (Pub. L. 91–515, title V, § 501(b), Oct. 30, 1970, 84 Stat. 1310.)

§ 4393. Report to Congress by President.

The President shall, within nine months of October 30, 1970, transmit to the Congress a report of the study and surveys required by section 4392 of this title, including (1) his conclusions regarding the nature and gravity of the hazards to human health and safety created by environmental pollution, (2) his evaluation of the medical and other assistance available to persons affected by such pollution, especially when such pollution reaches emergency levels, (3) his assessment of the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals, and (4) such legislative or other recommendations as he may deem appropriate. (Pub. L. 91–515, title V, § 501(c), Oct. 30, 1970, 84 Stat. 1310.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4394 of this title.

§ 4394. Supplemental reports by President.

The President shall, within one year of his transmittal to the Congress of the report required by section 4393 of this title, and annually thereafter, supplement that report with such new data, evaluations, or recommendations as he may deem appropriate. (Pub. L. 91–515, title V, § 501(d), Oct. 30, 1970, 84 Stat. 1310.)

§ 4395. Authorization of appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. (Pub. L. 91–515, title V, § 501(e), Oct. 30, 1970, 84 Stat. 1310.)

17. Environmental Programs, Appropriations

P.L. 94–378

ENVIRONMENTAL PROTECTION AGENCY

AGENCY AND REGIONAL MANAGEMENT

For agency and regional management expenses, including official reception and representation expenses (not to exceed $2,500); hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at price to members lower than to subscribers who are not members; $73,000,000.

RESEARCH AND DEVELOPMENT

For research and development activities, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate of GS–18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; $259,900,000, to remain available for obligation until September 30, 1978.

ABATEMENT AND CONTROL

For abatement and control activities, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; to remain available for obligation until September 30, 1978, $376,844,000 and for liquidation of obligations incurred in carrying out section 208 of the Federal Water Pollution Control Act, as amended, $49,182,000, to remain available until expended.

ENFORCEMENT

For enforcement activities, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; $56,561,000.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment of facilities of or used by the Environmental Protection Agency, $2,100,000, to remain available until expended.

CONSTRUCTION GRANTS

For liquidation of obligations incurred pursuant to authority contained in section 203 of the Federal Water Pollution Control Act, as amended, $3,800,000,000, to remain available until expended.

For an additional amount for liquidation of obligations, "Construction grants", for the period July 1, through September 30, 1976, $200,000,000, to remain available until expended.

For payment of reimbursement claims pursuant to section 206(a) of the Federal Water Pollution Control Act, as amended, $200,000,000, to remain available until expended.

SCIENTIFIC ACTIVITIES OVERSEAS (SPECIAL FOREIGN CURRENCY PROGRAM)

For payments in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States, for necessary expenses of the Environmental Protection Agency in the conduct of scientific activities overseas in connection with environmental pollution, as authorized by law, $5,000,000, to remain available until expended: *Provided*, That this appropriation shall be available in addition to other appropriations to such Agency, for payments in the foregoing currencies.

GENERAL PROVISIONS

Not to exceed 7 per centum of any appropriation made available to the Environmental Protection Agency by this Act (except appropriations for "Construction Grants") may be transferred to any other such appropriation.

No part of any budget authority made available to the Environmental Protection Agency by this Act or for the fiscal year 1976 and the period ending September 30, 1976, shall be used for any grant to cover in excess of 75 per centum of the total cost of the purposes to be carried out by such grant made pursuant to the authority contained in section 208 of the Federal Water Pollution Control Act (P.L. 92–500).

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For expenses necessary for the Council on En-

vironmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969 (Public Law 91–190) and the National Environmental Improvement Act of 1970 (Public Law 91–224), including official reception and representation expenses (not to exceed $1,000), hire of passenger vehicles, and support of the Citizens' Advisory Committee on Environmental Quality, $2,800,000.

PUBLIC LAW 94–351

CONSERVATION

SOIL CONSERVATION SERVICE

CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–590f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessry to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant material centers; classification and mapping of soil; dissemination of information; purchase and erection or alteration of permanent buildings; and operation and maintenance of aircraft, to remain available until expended, $214,423,000: *Provided,* That the cost of any permanent building purchased, erected, or as improved, exclusive of the cost of constructing a water supply or sanitary system and connecting the same to any such building and with the exception of buildings acquired in conjunction with land being purchased for other purposes, shall not exceed $5,000, except for one building to be constructed at a cost not to exceed $50,000 and eight buildings to be constructed or improved at a cost not to exceed $30,000 per building and except that alterations or improvements to other existing permanent buildings costing $5,000 or more may be made in any fiscal year in an amount not to exceed $1,000 per building: *Provided further,* That no part of this appropriation shall be available for the construction of any such building on land not owned by the Government: *Provided further,* That no part of this appropriation may be expended for soil and water conservation operations under the Act of April 27, 1935 (16 U.S.C. 590a–590f) in demonstration projects: *Provided further,* That this appropriation shall be available for field employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) and not to exceed $25,000 shall be available for employment under 5 U.S.C. 3109: *Provided further,* That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service.

RIVER BASIN SURVEYS AND INVESTIGATIONS

For necessary expenses to conduct research, investigations and surveys of the watersheds of rivers and other waterways, in accordance with section 6 of the Watershed Protection and Flood Prevention Act, approved August 4, 1954, as amended (16 U.S.C. 1006–1009), to remain available until expended, $14,745,000: *Provided,* That this appropriation shall be available for field employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $60,000 shall be available for employment under 5 U.S.C. 3109.

WATERSHED PLANNING

For necessary expenses for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001–1008), to remain available until expended, $11,196,000: *Provided,* That this appropriation shall be available for field employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $50,000 shall be available for employment under 5 U.S.C. 3109.

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures, including but not limited to research, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land, in accordance with the Watershed Protection and Flood Prevention Act, approved August 4, 1954, as amended (16 U.S.C. 1001–1005, 1007–1008), the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), and in accordance with the provisions of laws relating to the activities of the Department, $146,199,000 (of which $25,872,000 shall be available for the watersheds authorized under the Flood Control Act, approved June 22, 1936 (33 U.S.C. 701, 16 U.S.C. 1006a), as amended and supplemented): *Provided,* That this appropriation shall be available for field employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $200,000 shall be available for employment under 5 U.S.C. 3109: *Provided further,* That $23,400,000 in loans may be insured, or made to be sold and insured, under the Agricultural Credit Insurance Fund of the Farmers Home Administration (86 Stat. 663).

RESOURCE CONSERVATION AND DEVELOPMENT

For necessary expenses in planning and carrying out projects for resource conservation and development, and for sound land use, pursuant to the provisions of section 32(e) of title III of the Bankhead-Jones Farm Tenant Act, as amended (7 U.S.C. 1010–1011; 76 Stat. 607), and the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), $29,972,000: *Provided,* That $3,600,000 in loans may be insured, or made to be sold and insured, under the Agricultural Credit Insurance Fund of the

Farmers Home Administration (86 Stat. 663): *Provided further,* That this appropriation shall be available for field employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $50,000 shall be available for employment under 5 U.S.C. 3109.

GREAT PLAINS CONSERVATION PROGRAM

For necessary expenses to carry into effect a program of conservation in the Great Plains area, pursuant to section 16(b) of the Soil Conservation and Domestic Allotment Act, as added by the Act of August 7, 1956, as amended (16 U.S.C. 590p), $21,370,000, to remain available until expended.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

AGRICULTURAL CONSERVATION PROGRAM

For necessary expenses to carry into effect the program authorized in sections 7 to 15, 16(a), and 17 of the Soil Conservation and Domestic Allotment Act, approved February 29, 1936, as amended and supplemented (16 U.S.C. 590g–590o, 590p(a), and 590q), and sections 1001–1008, and 1010 of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501–1508, and 1510), and including not to exceed $15,000 for the preparation and display of exhibits, including such displays at State, interstate, and international fairs within the United States, $105,000,000, for compliance with the programs of soil-building and soil- and water-conserving practices authorized under this head in the Agriculture and Related Agencies Appropriation Act, 1976, entered into during the period July 1, 1975, to December 31, 1976, inclusive: *Provided,* That no portion of the funds for the current year's program may be utilized to provide financial or technical assistance for drainage on wetlands now designated as Wetland Types 3(III), 4(IV), and 5(V) in United States Department of the Interior, Fish and Wildlife Circular 39, Wetlands of the United States, 1956: *Provided further,* That necessary amounts shall be available for administrative expenses in connection with the formulation and administration of the 1977 program of soil-building and soil- and water-conserving practices, including related wildlife conserving practices, and pollution abatement practices, under the Act of February 29, 1936, as amended (amounting to $190,000,000, excluding administration, except that no participant in the Agricultural Conservation Program shall receive more than $2,500, except where the participants from two or more farms or ranches join to carry out approved practices designed to conserve or improve the agricultural resources of the community): *Provided further,* That such amounts shall be available for the purchase of seeds, fertilizers, lime, trees, or any other conservation material, or any soil-terracing services, and making grants thereof to agricultural producers to aid them in carrying out approved 1970 farming practices to be selected by the county committees under programs provided for herein: *Provided further,* That no part of the funds in this Act may be used to obtain or require submission of information from participants in this program not required in carrying out the 1970 program: *Provided further,* That not to exceed 5 per centum of the allocation for the current year's program for any county may, on the recommendation of such county committee and approval of the State committee, be withheld and allotted to the Soil Conservation Service for services of its technicians in formulating and carrying out the Agricultural Conservation Program in the participating counties, and shall not be utilized by the Soil Conservation Service for any purpose other than technical and other assistance in such counties, and in addition, on the recommendation of such county committee and approval of the State committee, not to exceed 1 per centum may be made available to any other Federal, State, or local public agency for the same purpose and under the same conditions: *Provided further,* That for the current year's program $2,500,000 shall be available for technical assistance in formulating and carrying out rural environmental practices: *Provided further,* That no part of any funds available to the Department, or any bureau, office, corporation, or other agency constituting a part of such Department, shall be used in the current fiscal year for the payment of salary or travel expenses of any person who has been convicted of violating the Act entitled "An Act to prevent pernicious political activities", approved August 2, 1939, as amended, or who has been found in accordance with the provisions of title 18 U.S.C. 1913, to have violated or attempted to violate such section which prohibits the use of Federal appropriations for the payment of personal services or other expenses designed to influence in any manner a Member of Congress to favor or oppose any legislation or appropriation by Congress except upon request of any Member or through the proper official channels.

FORESTRY INCENTIVES PROGRAM

For necessary expenses not otherwise provided for, to carry out the program of forestry incentives, as authorized in sections 1009 and 1010 of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1509–1510) including technical assistance and related expenses, $15,000,000.

WATER BANK PROGRAM

For necessary expenses to carry into effect the provisions of the Water Bank Act (16 U.S.C. 1301–1311), $10,000,000, to remain available until expended.

EMERGENCY CONSERVATION MEASURES

For emergency conservation measures, to be used for the same purposes and subject to the same conditions as funds appropriated under this head in the Third Supplemental Appropriations Act, 1957, $10,000,000, with which shall be merged the unexpended balances of funds heretofore appropriated for emergency conservation measures.

18. Environmental Protection Agency

Reorganization Plan No. 3 of 1970; 42 U.S.C. 4321 note

SECTION 1. ESTABLISHMENT OF AGENCY

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency."

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313).

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate.

SEC. 2. TRANSFERS TO ENVIRONMENTAL PROTECTION AGENCY

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan No. 2 of 1966 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof.

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d–1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

(i) The National Air Pollution Control Administration,

(ii) The Environmental Control Administration:

(A) Bureau of Solid Waste Management,

(B) Bureau of Water Hygiene,

(C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 348, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended, and the Public Health Service Act, as amended.

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969, [section 4344(5) of this title], (Public Law 91–190, approved January 1, 1970, 83 Stat. 855), as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8)(i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135–135k), (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408(l) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346a(l)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 169(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. 466f), together with its functions, and (ii) the hearing boards provided for in sections 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466g(c)(4); 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 U.S.C. 1857e), together with its functions. The functions of the Secretary of Health, Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Administrator may from time to time make such

provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. 466–1).

(2) The Federal Radiation Council (73 Stat. 690; 42 U.S.C. 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code and providing for an Environmental Protection Agency. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 3 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 1 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

Section 907 of title 5 of the United States Code will operate to preserve administrative proceedings, including any public hearing proceedings, related to the transferred functions, which are pending immediately prior to the taking effect of the reorganization plan.

The reorganization plan should result in more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON

THE WHITE HOUSE,
July 9, 1970.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment—land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has come to organize them rationally and systematically. As a major step in this direction, I am transmitting today two reorganization plans: one to establish an Environmental Protection Agency, and one to establish, within the Department of Commerce, a National Oceanic and Atmospheric Administration.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action.

Despite its complexity, for pollution control purposes the environment must be perceived as a single, interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

Many agency missions, for example, are designed primarily along media lines—air, water, and land. Yet the sources of air, water, and land pollution are interrelated and often interchangeable. A single source may pollute the air with smoke and chemicals, the land with solid wastes, and a river or lake with chemical and other wastes. Control of the air pollution may produce more solid wastes, which then pollute the land or water. Control of the water-polluting effluent may convert it into solid wastes, which must be disposed of on land.

Similarly, some pollutants—chemicals, radiation, pesticides—appear in all media. Successful control of them at present requires the coordinated efforts of a variety of separate agencies and departments. The results are not always successful.

A far more effective approach to pollution control would:

—identify pollutants.
—trace them through the entire ecological chain, observing and recording changes in form as they occur.
—Determine the total exposure of man his environment.
—Examine interactions among forms of pollution.
—Identify where in the ecological chain interdiction would be most appropriate.

In organizational terms, this requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements—in research and in aids to State and local anti-pollution programs, for example—to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

Components of the EPA

Under the terms of Reorganization Plan No. 3, the following would be moved to the new Environmental Protection Agency:

—The functions carried out by the Federal Water Quality Administration (from the Department of the Interior).

—Functions with respect to pesticides studies now vested in the Department of the Interior.

—The functions carried out by the Natonal Air Pollution Control Administration (from the Department of Health, Education, and Welfare).

—The functions carried out by the Bureau of Solid Waste Management and the Bureau of Water Hygiene, and portions of the functions carried out by the Bureau of Radiological Health of the Environmental Control Administration (from the Department of Health, Education and Welfare).

—Certain functions with respect to pesticides carried out by the Food and Drug Administration (from the Department of Health, Education and Welfare).

—Authority to perform studies relating to ecological systems now vested in the Council on Environmental Quality.

—Certain functions respecting radiation criteria and standards now vested in the Atomic Energy Commission and the Federal Radiation Council.

—Functions respecting pesticides registration and related activities now carried out by the Agricultural Research Service (from the Department of Agriculture).

With its broad mandate, EPA would also develop competence in areas of environmental protection that have not previously been given enough attention, such, for example, as the problem of noise, and it would provide an organization to which new programs in these areas could be added.

In brief, these are the principal functions to be transferred:

Federal Water Quality Administration.—Charged with the control of pollutants which impair water quality, it is broadly concerned with the impact of degraded water quality. It performs a wide variety of functions, including research, standard-setting and enforcement, and provides construction grants and technical assitance.

Certain Pesticides Research Authority From the Department of the Interior.—Authority for research on the effects of pesticides on fish and wildlife would be provided to the EPA through thansfer of the specialized research authority of the pesticides act enacted in 1958 Interior would retain its responsibility to do research on all factors affecting fish and wildlife. Under this provision, only one laboratory would be transferred to the EPA—the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries. The EPA would work closely with the fish and wildlife laboratories remaining with the Bureau of Sport Fisheries and Wildlife.

National Air Pollution Control Administration.—As the principal Federal agency concerned with air pollution, it conducts research on the effects of air pollution, operates a monitoring network, and promulgates criteria which serve as the basis for setting air quality standards Its regulatory functions are similar to those of the Federal Water Quality Administration. NAPCA is responsible for administering the Clean Air Act, which involves designating air quality regions, approving State standards and providing financial and technical assistance to State Control agencies to enable them to comply with the Act's provisions. It also sets and enforces Federal automotive emission standards.

Elements of the Environmental Control Administration.—ECA is the focal point within HEW for evaluation and control of a broad range of environmental health problems, including water quality, solid wastes, and radiation. Programs in the ECA involve research, development of criteria and standards, and the administration of planning and demonstration grants. From the ECA, the activities of the Bureaus of Water Hygiene and Solid Waste Management and portions of the activities of the Bureau of Radiological Health would be transferred. Other functions of the ECA including those related to the regulation of radiation from consumer products and occupational safety and health would remain in HEW.

Pesticides Research and Standard-Setting Programs of the Food and Drug Administration.—FDA's pesticides program consists of setting and enforcing standards which limit pesticide residues in food. EPA would have the authority to set pesticide standards and to monitor compliance with them, as well as to conduct related research. However, as an integral part of its food protection activities, FDA would retain its authority to remove from the market food with excess pesticide residues.

General Ecological Research From the Council on Environmental Quality.—This authority to perform studies and research relating to ecological systems would be in addition to EPA's other specific research authorities, and it would help EPA to measure the impact of pollutants. The Council on Environmental Quality would retain its authority to conduct studies and research relating to environmental quality.

Environmental Radiation Standards Programs.—The Atomic Energy Commission is now responsible for establishing environmental radiation standards and emission limits for radioactivity. Those standards have been based largely on broad guidelines recommended by the Federal Radiation Council. The Atomic Energy Commission's authority to set standards for the protection of the general environment from radioactive material would be transferred to the Environmental Protection Agency. The functions of the Federal Radiation Council would also be transferred. AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority.

Pesticides Registration Program of the Agricultural Research Service.—The Department of Agriculture is currently responsible for several distinct functions related to pesticides use. It conducts research on the efficacy of various pesticides as related to other pest control methods and on the effects of pesticides on non-target plants, livestock, and poultry. It registers pesticides, monitors their persistence and carries out an educational program on pesticide use through the extension service. It conducts extensive pest control programs which utilize pesticides.

By transferring the Department of Agriculture's pesticides registration and monitoring function to the EPA and merging it with the pesticides programs being transferred from HEW and Interior, the new agency would be given a broad capability for control over the introduction of pesticides into the environment.

The Department of Agriculture would continue to conduct research on the effectiveness of pesticides. The Department would furnish this information to the EPA, which would have the responsibility for actually licensing pesticides for use after considering environmental and health effects. Thus the new agency would be able to make use of the expertise of the Department.

Advantages of Reorganization

This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment—biological as well as physical. With these data, the EPA would be able to establish quantitative "environmental baselines"—critical if we are to measure adequately the success or failure of our pollution abatement efforts.

As no disjointed array of separate programs can, the EPA would be able—in concert with the States—to set and enforce standards for air and water quality and for individual pollutants. This consolidation of pollution control authorities would help assure that we do not create new environmental problems in the process of controlling existing ones. Industries seeking to minimize the adverse impact of their activities on the environment would be assured of consistent standards covering the full range of their waste disposal problems. As the States develop and expand their own pollution control programs, they would be able to look to one agency to support their

efforts with financial and technical assistance and training.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area.

Roles and Functions of EPA

The principal roles and functions of the EPA would include:

—The establishment and enforcement of environmental protection standards consistent with national environmental goals.

—The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.

—Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.

—Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with the Council of Economic Advisers), while the EPA would be an operating, "line" organization. The Council will continue to be a part of the Executive Office of the President and will perform its overall coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality—wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environment field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary—and taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.

National Oceanic and Atmospheric Administration

The oceans and the atmosphere are interacting parts of the total environmental system upon which we depend not only for the quality of our lives, but for life itself.

We face immediate and compelling needs for better protection of life and property from natural hazards, and for a better understanding of the total environment—and understanding which will enable us more effectively to monitor and predict its actions, and ultimately, perhaps to exercise some degree of control over them.

We also face a compelling need for exploration and development leading to the intelligent use of our marine resources. The global oceans, which constitute nearly three-fourths of the surface of our planet, are today the least-understood, the least-developed, and the least-protected part of our earth. Food from the oceans will increasingly be a key element in the world's fight against hunger. The mineral resources of the ocean beds and of the oceans themselves, are being increasingly tapped to meet the growing world demand. We must understand the nature of these resources, and assure their development without either contaminating the marine environment or upsetting its balance.

Establishment of the National Oceanic and Atmospheric Administration—NOAA—within the Department of Commerce would enable us to approach these tasks in a coordinated way. By employing a unified approach to the problems of the oceans and atmosphere, we can increase our knowledge and expand our opportunities not only in those areas, but in the third major component of our environment, the solid earth, as well.

Scattered through various Federal departments and agencies, we already have the scientific, technological, and administrative resources to make an effective, unified approach possible. What we need is to bring them together. Establishment of NOAA would do so.

By far the largest of the components being merged would be the Commerce Department's Environmental Science Services Administration (ESSA), with some 10,000 employees (70 percent of NOAA's total personnel strength) and estimated Fiscal 1970 expenditures of almost $200 million. Placing NOAA within the Department of Commerce therefore entails the least dislocation, while also placing it within a Department which has traditionally been a center for service activities in the scientific and technological area.

Components of NOAA

Under terms of Reorganization Plan No. 4, the programs of the following organizations would be moved into NOAA:

—The Environmental Science Services Administration (from within the Department of Commerce).

—Elements of the Bureau of Commercial Fisheries (from the Department of the Interior).

—The marine sport fish program of the Bureau of Sport Fisheries and Wildlife (from the Department of the Interior).

—The Marine Minerals Technology Center of the Bureau of Mines (from the Department of the Interior).

—The Office of Sea Grant Programs (from the National Science Foundation).

—Elements of the United States Lake Survey (from the Department of the Army).

In addition, by executive action, the programs of the following organizations would be transferred to NOAA:

—The National Oceanographic Data Center (from the Department of the Navy).

—The National Oceanographic Instrumentation Center (from the Department of the Navy).

—The National Data Buoy Project (from the Department of Transportation).

In brief, these are the principal functions of the programs and agencies to be combined:

The Environmental Science Services Administration (ESSA) comprises the following components:

—The Weather Bureau (weather, marine, river and flood forecasting and warning).

—The Coast and Geodetic Survey (earth and marine description, mapping and charting).

—The Environmental Data Service (storage and retrieval of environmental data).

—The National Environmental Satellite Center (observation of the global environment from earth-orbiting satellites).

—The ESSA Research Laboratories (research on physical environmental problems).

ESSA's activities include observing and predicting the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth. It maintains the nation's warning systems for such natural hazards as hurricanes, tornadoes, floods, earthquakes and seismic sea waves. It provides information for national defense, agriculture, transportation and industry.

ESSEA monitors atmospheric, oceanic and geophysical phenomena on a global basis, through an unparalleled complex of air, ocean, earth and space facilities. It also prepares aeronautical and marine maps and charts.

BUREAU OF COMMERCIAL FISHERIES AND MARINE SPORT FISH ACTIVITIES.—Those fishery activities of the Department of the Interior's U.S. Fish and Wildlife Service which are ocean related and those which are directed toward commercial fishing would be transferred. The Fish and Wildlife Service's Bureau of Commercial Fisheries has the dual function of strengthening the fishing industry and promoting conservation of fishery stocks. It conducts research on important marine species and on fundamental oceanography, and operates a fleet of oceanographic vessels and a number of laboratories. Most of its activities would be transferred. From the Fish and Wildlife Service's Bureau of Sport Fisheries and Wildlife, the marine sport fishing program would be transferred. This involves five supporting laboratories and three ships engaged in activities to enhance marine sport fishing opportunities.

THE MARINE MINERALS TECHNOLOGY CENTER is concerned with the development of marine mining technology.

OFFICE OF SEA GRANT PROGRAMS.—The Sea Grant Program was authorized in 1966 to permit the Federal Government to assist the academic and industrial communities in developing marine resources and technology. It aims at strengthening education and training of marine specialists, supporting applied research in the recovery and use of marine resources, and developing extension and advisory services. The Office carries out these objectives by making grants to selected academic institutions.

THE U.S. LAKE SURVEY has two primary missions. It prepares and publishes navigation charts of the Great Lakes and tributary waters and conducts research on a variety of hydraulic and hydrologic phenomena of the Great Lakes' waters. Its activities are very similar to those conducted along the Atlantic and Pacific coasts by ESSA's Coast and Geodetic Survey.

THE NATIONAL OCEANOGRAPHIC DATA CENTER is responsible for the collection and dissemination of oceanographic data accumulated by all Federal agencies.

THE NATIONAL OCEANOGRAPHIC INSTRUMENTATION CENTER provides a central Federal service for the calibration and testing of oceanographic instruments.

THE NATIONAL DATA BUOY DEVELOPMENT PROJECT was established to determine the feasibility of deploying a system of automatic ocean buoys to obtain oceanic and atmospheric data.

ROLE OF NOAA

Drawing these activities together into a single agency would make possible a balanced Federal program to improve our understanding of the resources of the sea, and permit their development and use while guarding against the sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets. It would make possible a consolidated program for achieving a more comprehensive understanding of oceanic and atmospheric phenomena, which so greatly affect our lives and activities. It would facilitate the cooperation between public and private interests that can best serve the interests of all.

I expect that NOAA would exercise leadership in developing a national oceanic and atmospheric program of research and development. It would coordinate its own scientific and technical resources with the technical and operational capabilities of other government agencies and private institutions. As important, NOAA would continue to provide those services to other agencies of government, industry and private individuals which have become essential to the efficient operation of our transportation systems, our agriculture and our national security. I expect it to maintain continuing and close liaison with the new Environmental Protection Agency and the Council on Environmental Quality as part of an effort to ensure that environmental questions are dealt with in their totality and they benefit from the full range of the government's technical and human resources.

Authorities who have studied this matter, including the Commission on Marine Science, Engineering and Resources, strongly recommended the creation of a National Advisory Committee for the Oceans. I agree. Consequently, I will request, upon approval of the plan, that the Secretary of Commerce establish a National Advisory Committee for the Oceans and the Atmosphere to advise him on the progress of governmental and private programs in achieving the nation's oceanic and atmospheric objectives.

AN ON-GOING PROCESS

The reorganizations which I am here proposing afford both the Congress and the Executive Branch an opportunity to re-evaluate the adequacy of existing program authorities involved in these consolidations. As these two new organizations come into being, we may well find that supplementary legislation to perfect their authorities will be necessary. I look forward to working with the Congress in this task.

In formulating these reorganization plans, I have been greatly aided by the work of the President's Advisory Council on Executive Organization (the Ash Council), the Commission on Marine Science, Engineering and Resources (the Stratton Commission, appointed by President Johnson), my special task force on oceanography headed by Dr. James Wakelin, and by the information developed during both House and Senate hearings on proposed NOAA legislation.

Many of those who have advised me have proposed additional reorganizations, and it may well be that in the future I shall recommend further changes. For the present, however, I think the two reorganizations transmitted today represent a sound and significant beginning. I also think that in practical terms, in this sensitive and rapidly developing area, it is better to proceed a step at a time—and thus to be sure that we are not caught up in a form of organizational indigestion from trying to rearrange too much at once. As we see how these changes work out, we will gain a better understanding of what further changes—in addition to these—might be desirable.

Ultimately, our objective should be to insure that the nation's environmental and resource protection activities are so organized as to maximize both the effective coordination of all and the effective functioning of each.

The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man. With its acceptance of these reorganization plans, the Congress will help us fulfill that commitment.

RICHARD NIXON.

THE WHITE HOUSE,
July 9, 1970.

19. Environmental Quality Improvement Act

42 U.S.C. 4371–4374

§ 4371. Congressional findings, declarations, and purposes.

(a) The Congress finds—

(1) that man has caused changes in the environment;

(2) that many of these changes may affect the relationship between man and his environment; and

(3) that population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b) (1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this chapter are—

(1) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) to authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91–190.

(Pub. L. 91–224, title II, § 202, Apr. 3, 1970, 84 Stat. 114.)

§ 4372. Office of Environmental Quality.

(a) Establishment; Director; Deputy Director.

There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91–190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Compensation of Deputy Director.

The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) Employment of personnel, experts, and consultants; compensation.

The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this chapter and Public Law 91–190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of Title 5.

(d) Duties and functions of Director.

In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91–190.

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) Authority of Director to contract.

The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 529 of Title 31 and section 5 of Title 41 in carrying out his functions. (Pub. L. 91–224, title II, § 203, Apr. 3, 1970, 84 Stat. 114; 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

§ 4373. Referral of Environmental Quality Reports to standing committees having jurisdiction.

Each Environmental Quality Report required by Public Law 91–190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report. (Pub. L. 91–224, title II, § 204, Apr. 3, 1970, 84 Stat. 115.)

§ 4374. Authorization of appropriations.

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91–190:

(a) $2,000,000 for the fiscal year ending June 30, 1976.

(b) $500,000 for the transition period (July 1, 1976, to September 30, 1976).

(c) $3,000,000 for the fiscal year ending September 30, 1977.

(d) $3,000,000 for the fiscal year ending September 30, 1978. (As amended Pub. L. 93–36, May 18, 1973, 87 Stat. 72; Pub. L. 94–52, § 1, July 3, 1975, 89 Stat. 258; Pub. L. 94–298, May 29, 1976, 90 Stat. 587.)

AMENDMENTS

1976—Pub. L. 94–298 authorized appropriations for fiscal year 1976 through fiscal year 1978.

1975—Pub. L. 94–52 substituted "$2,000,000 for the fiscal year ending June 30, 1976, and not to exceed $500,000 for the transition period (July 1, 1976 to September 30, 1976)" for "$1,500,000 for the fiscal year ending June 30, 1974, and $2,000,000 for the fiscal year ending June 30, 1975".

1973—Pub. L. 93–36 substituted provisions authorizing to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality $1,500,000 for the fiscal year ending June 30, 1974, and $2,000,000 for the fiscal year ending June 30, 1975, for provisions authorizing to be appropriated not to exceed $500,000 for the fiscal year ending June 30, 1970, not to exceed $750,000 for the fiscal year ending June 30, 1971, not to exceed $1,250,000 for the fiscal year ending June 30, 1972, and not to exceed $1,500,000 for the fiscal year ending June 30, 1973.

20. Environmental Safeguards

Ex. Order 11643, 37 F.R. 2875

(See Ex. Order 11643 under title III *Executive Orders*)

21. Environmental Science Service Administration

Reorganization Plan No. 2 of 1965; 79 Stat. 1318

Eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 13, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see section 901 et seq. of this title].

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION, DEPARTMENT OF COMMERCE

SECTION 1. TRANSFER OF FUNCTIONS

All functions vested by law in the Weather Bureau, the Chief of the Weather Bureau, the Coast and Geodetic Survey, the Director of the Coast and Geodetic Survey, and any officer, employee, or organizational entity of that Bureau or Survey, and not heretofore transferred to the Secretary of Commerce, hereinafter referred to as the Secretary, are hereby transferred to the Secretary.

SEC. 2. ABOLITIONS

(a) The offices of Director of the Coast and Geodetic Survey, Deputy Director of the Coast and Geodetic Survey, and Chief of the Weather Bureau are hereby abolished. The Secretary shall make such provisions as he shall deem to be necessary respecting the winding up of any outstanding affairs of the officers whose offices are abolished by the provisions of this section.

(b) The abolitions effected by the provision of subsection (a) of this section shall exclude the abolition of rights to which the present incumbents of the abolished offices would be entitled under law upon the termination of their appointments.

SEC. 3. ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(a) The Coast and Geodetic Survey and the Weather Bureau are hereby consolidated to form a new agency in the Department of Commerce which shall be known as the Environmental Science Services Administration, hereinafter referred to as the Administration.

(b) The Secretary shall from time to time establish such constituent organizational entities of the Administration, with such names, as he shall determine.

SEC. 4. OFFICERS OF THE ADMINISTRATION

(a) There shall be at the head of the Administration the Administrator of the Environmental Science Services Administration, hereinafter referred to as the Administrator. The Administrator shall be appointed by the President by and with the advice and consent of the Senate. He shall perform such functions as the Secretary may from time to time direct.

(b) (1) There shall be in the Administration a Deputy Administrator of the Environmental Science Services Administration, hereinafter referred to as the Deputy Administrator, who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Secretary may from time to time direct, and, unless he is compensated in pursuance of the provisions of paragraph (2), below, shall receive compensation in accordance with the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of this title].

(2) The office of Deputy Administrator may be filled at the discretion of the President by appointment (by and with the advice and consent of the Senate) from the active list of commissioned officers of the Administration in which case the appointment shall create a vacancy on the active list and while holding the office of Deputy Administrator the officer shall have rank, pay and allowances not exceeding those of a Vice Admiral.

(c) The Deputy Administrator or such other official of the Department of Commerce as the Secretary shall from time to time designate shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) At any one time, one principal constituent organizational entity of the Administration may, if the Secretary so elects, be headed by a commissioned officer of the Administration, who shall be designated by the Secretary. Such designation of an officer shall create a vacancy on

the active list and while serving under this paragraph the officer shall have rank, pay and allowances not exceeding those of a Rear Admiral (upper half).

(e) Any commissioned officer of the Administration who has served as Deputy Administrator or has served in a rank above that of Captain as the head of a principal constituent organizational entity of the Administration, and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of Captain, shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of Captain and such officer shall be an extra number in that grade. [As amended Pub. L. 90–83, § 10(c), Sept 11, 1967, 81 Stat. 224.]

SEC. 5. AUTHORITY OF THE SECRETARY

Nothing in this reorganization plan shall divest the Secretary of any function vested in him by law or by Reorganization Plan No. 5 of 1950 (64 Stat. 1263) or in any manner derogate from any authority of the Secretary thereunder.

SEC. 6. PERSONNEL, PROPERTY, RECORDS AND FUNDS

(a) The personnel (including commissioned officers) employed in the Coast and Geodetic Survey, the personnel employed in the Weather Bureau, and the property and records held or used by the Weather Bureau or the Coast and Geodetic Survey shall be deemed to be transferred to the Administration.

(b) Unexpended balances of appropriations, allocations, and other funds available or to be made available in connection with functions now administered by the Weather Bureau or by the Coast and Geodetic Survey shall be available to the Administration hereunder in connection with those functions.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the foregoing provisions of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect to which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1965, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended, and providing for the reorganization of two major agencies of the Department of Commerce: The Weather Bureau and the Coast and Geodetic Survey.

The reorganization plan consolidates the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration. It is the intention of the Secretary of Commerce to transfer the Central Radio Propagation Laboratory of the National Bureau of Standards to the Administration when the reorganization plan takes effect. The new Administration will then provide a single national focus for our efforts to describe, understand, and predict the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth.

Establishment of the Administration will mark a significant step forward in the continual search by the Federal Government for better ways to meet the needs of the Nation for environmental science services. The organizational improvements made possible by the reorganization plan will enhance our ability to develop an adequate warning system for the severe hazards of nature—for hurricanes, tornadoes, floods, earthquakes, and seismic sea waves, which have proved so disastrous to the Nation in recent years. These improvements will permit us to provide better environmental information to vital segments of the Nation's economy—to agriculture, transportation, communications, and industry, which continually require information about the physical environment. They will mean better services to other Federal departments and agencies—to those that are concerned with the national defense, the exploration of outer space, the management of our mineral and water resources, the protection of the public health against environmental pollution, and the preservation of our wilderness and recreation areas.

The new Administration will bring together a number of allied scientific disciplines that are concerned with the physical environment. This integration will better enable us to look at man's physical environment as a scientific whole and to seek to understand the interactions among air, sea, and earth and between the upper and lower atmosphere. It will facilitate the development of programs dealing with the physical environment and will permit better management of these programs. It will enhance our capability to identify and solve important long-range scientific and technological problems associated with the physical environment. The new Administration will, in consequence, promote a fresh sense of scientific dedication, discovery, and challenge, which are essential if we are to attract scientists and engineers of creativity and talent to Federal employment in this field.

The reorganization plan provides for an Administrator at the head of the Administration, and for a Deputy Administrator, each of whom will be appointed by the President by and with the advice and consent of the Senate. As authorized by the civil service and other laws and regulations, subordinate officers of the Administration will be appointed by the Secretary of Commerce or be assigned by him from among a corps of commissioned officers. The Administration will perform such functions as the Secretary of Commerce may delegate or otherwise assign to it and will be under his direction and control.

Commissioned officers of the Coast and Geodetic Survey will become commissioned officers of the Administration and may serve at the discretion of the Secretary of Commerce throughout the Administration. The reorganization plan authorizes the President at his discretion to fill the Office of Deputy Administrator by appointment, by and with the advice and consent of the Senate, from the active list of commissioned officers of the Administration.

The reorganization plan transmitted herewith abolishes—and thus excludes from the consolidation mentioned above—the offices of (1) Chief of the Weather Bureau, provided for in the act of October 1, 1890 (15 U.S.C. 312); (2) Director of the Coast and Geodetic Survey, provided for in the acts of June 4, 1920, and February 16, 1929, as amended (33 U.S.C. 852, 852a); and (3) Deputy Director of the Coast and Geodetic Survey, provided for in the act of January 19, 1942, as amended (33 U.S.C. 852b).

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 2 of 1965 is necessary to accomplish one or more of

the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that by reason of the reorganizations made by the reorganization plan, it is necessary to include in the plan provisions for the appointment and compensation of the officers of the Administration set forth in section 4 of the reorganization plan. The rate of compensation fixed for each of these officers is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

In addition to permitting more effective management within the Department of Commerce, the new organization will ultimately produce economies. These economies will be of two types. The first, and probably the most significant, is the savings and avoidance of costs which will result from the sharing of complex and expensive facilities such as satellites, computers, communication systems, aircraft, and ships. These economies will increase in significance as developments in science and technology bring into being still more advanced equipment. Second, integration of the existing headquarters and field organizations will permit more efficient utilization of existing administrative staffs and thereby produce future economies. It is, however, impracticable to specify or itemize at this time the reductions of expenditures which it is probable will be brought about by the taking effect of the reorganizations included in the reorganization plan.

I recommend that the Congress allow the accompanying reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, May 13, 1965.

22. Establishing the National Industrial Pollution Control Council

Ex. Order 11523

(See Ex. Order 11523 under title III *Executive Orders*)

23. Estuarine Areas

16 U.S.C. 1221–1226

(See Estuarine Areas under title XII *Water Resources*)

24. Federal Energy Administration Act

15 U.S.C. 761–786

Sec.

§ 761. Congressional declaration of purpose.

(a) The Congress hereby declares that the general welfare and the common defense and security require positive and effective action to conserve scarce energy supplies, to insure fair and efficient distribution of, and the maintenance of fair and reasonable consumer prices for, such supplies, to promote the expansion of readily usable energy sources, and to assist in developing policies and plans to meet the energy needs of the Nation.

(b) The Congress finds that to help achieve these objectives, and to assure a coordinated and effective approach to overcoming energy shortages, it is necessary to reorganize certain agencies and functions of the executive branch and to establish a Federal Energy Administration.

(c) The sole purpose of this chapter is to create an administration in the executive branch, called the Federal Energy Administration, to vest in the Administration certain functions as provided in this chapter, and to transfer to such Administration certain executive branch functions authorized by other laws, where such transfer is necessary on an interim basis to deal with the Nation's energy shortages. (Pub. L. 93–275, § 2, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section 30 of Pub. L. 93–275 provided that: "This Act [this chapter] shall become effective sixty days after the date of enactment [May 7, 1974] or sooner if the President publishes notice in the Federal Register. This Act [this chapter] shall terminate June 30, 1976."

SHORT TITLE

Section 1 of Pub. L. 93–275 provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Federal Energy Administration Act of 1974'."

EX. ORD. NO. 11790. EFFECTUATION OF CHAPTER

Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, provided:

Under and by virtue of the authority vested in me by the Federal Energy Administration Act of 1974 (Public Law 93–275) [this chapter], the Emergency Petroleum Allocation Act of 1973 (Public Law 93–159; 87 Stat. 627) [section 751 et seq. of this title], the Economic Stabilization Act of 1970, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Pursuant to the authority vested in me by section 30 of the Federal Energy Administration Act of 1974 [set out as a note under this section], notice is hereby given that that act shall be effective as of June 27, 1974.

SEC. 2. (a) There is hereby delegated to the Administrator of the Federal Energy Administration (hereinafter referred to as the "Administrator"), all authority vested in the President by the Emergency Petroleum Allocation Act of 1973. [section 751 et seq. of this title].

(b) The Administrator shall submit to the Congress the reports required by section 4(c)(2) of the Emergency Petroleum Allocation Act of 1973 [section 753(c)(2) of this title].

SEC. 3. (a) There is hereby delegated to the Administrator the authority vested in the President by section 203 (a)(3) of the Economic Stabilization Act of 1970, as amended, to the extent such authority remains available under the provisions of section 218 of that act.

(b) The authority under the Economic Stabilization Act of 1970, as amended, that was delegated to the Administrator of the Federal Energy Office by the Chairman of the Cost of Living Council pursuant to section 4(b) of Executive Order No. 11748 of December 4, 1973, [set out as a note under section 754 of this title], is hereby transferred to the Administrator to the extent such authority remains available under the provisions of section 218 of that act.

SEC. 4. Notwithstanding the provisions of Executive Order No. 10480, as amended [set out as a note under section 2153 of Title 50, Appendix, War and National Defense], the Administrator is authorized to exercise the authority vested in the President by the Defense Production Act of 1950, as amended [section 2061 et seq. of Title 50, Appendix, War and National Defense], except section 708 thereof, [section 2158 of Title 50, Appendix, War and National Defense], as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government.

SEC. 5. (a) The Federal Energy Office established by Executive Order No. 11748 is hereby abolished, and that Executive order is hereby revoked.

(b) The authority vested in the Administrator of the Federal Energy Office to appoint a Deputy Administrator of that Office and to compensate that officer at the rate prescribed for officers and positions at level III of the Executive Schedule (5 U.S.C. 5314) is hereby revoked.

(c) All orders, regulations, circulars, or other directives issued and all other actions taken pursuant to any authority delegated or transferred to the Administrator by this order prior to and in effect on the date of this order are hereby confirmed and ratified, and shall remain in full force and effect, as if issued under this order, unless or until altered, amended, or revoked by the Administrator or by such competent authority as he may specify.

(d) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions of the Administrator of the Federal Energy Office, as Administrator of that Office or as Chairman of the Oil Policy Committee, are hereby transferred to the Administrator.

SEC. 6. All authority delegated or transferred to the Administrator by this order may be further delegated, in whole or in part, by the Administrator to any other office or any department or agency of the United States, or, if authorized by law, to any State or officer thereof.

SEC. 7. (a) Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19] is hereby amended by striking "Secretary of the Interior" and "Secretary" wherever it appears in that Proclamation and inserting in lieu thereof "Administrator of the Federal Energy Administration."

(b) The Appeals Board established by the Secretary of the Interior pursuant to section 5(a) of Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19] is hereby continued until such time as the Administrator shall otherwise direct. The Administrator, at his pleasure, may designate a representative of the Federal Energy Administration to be a member of the Appeals Board in place of the representative of the Department of the Interior specified in the last sentence of section 5(a) of that proclamation.

(c) The Oil Policy Committee is hereby abolished and section 7, 8, and 9 of Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19], are

hereby revoked. The functions of the Chairman of the Oil Policy Committee are hereby transferred to the Administrator.

(d) Section 10 of Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19], is hereby amended by inserting after "Cost of Living Council" the following "or the Federal Energy Administration, as the case may be,".

(e) Section 2 of Executive Order No. 11775 of March 26, 1974, is hereby revoked.

SEC. 8. Except as provided in section 5(d), so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available, in connection with the functions transferred to the Administrator by this order or by the Federal Energy Administration Act of 1974 [this chapter] as the Director of the Office of Management and Budget shall determine shall be transferred at such time or times as the Director shall direct for use in connection with the functions so transferred.

SEC. 9. Nothing in this order shall be deemed to affect rights to reemployment under the provisions of section 5(a)(1)(B) of the Emergency Petroleum Allocation Act of 1973 [section 754(a)(1)(B) of this title], or section 212(g) of the Economic Stabilization Act of 1970, as amended.

SEC. 10. The provisions of sections 2 through 9 of this order shall be effective as of June 27, 1974, the effective date of the Federal Energy Administration Act of 1974 [this chapter] specified in section 1 of this order.

RICHARD NIXON.

§ 762. Establishment.

There is hereby established an independent agency in the executive branch to be known as the Federal Energy Administration (hereinafter in this chapter referred to as the "Administration"). (Pub. L. 93–275, § 3, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 763. Officers.

(a) Administrator; appointment and compensation; supervision and direction of Administration.

There shall be at the head of the Administration an Administrator (hereinafter in this chapter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall receive compensation at the rate prescribed for offices and positions at level II of the Executive Schedule (section 5313 of Title 5). The Administration shall be administered under the supervision and direction of the Administrator.

(b) Functions of Administrator; delegation of functions.

(1) The functions and powers of the Administration shall be vested in and exercised by the Administrator.

(2) The Administrator may, from time to time and to the extent permitted by law, consistent with the purposes of this chapter delegate such of his functions as he deems appropriate.

(c) Deputy Administrators; number; appointment and compensation.

There shall be in the Administration two Deputy Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level III of the Executive Schedule (section 5314 of Title 5).

(d) Assistant Administrators; number; appointment and compensation.

There are authorized to be in the Administration six Assistant Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level IV of the Executive Schedule (section 5315 of Title 5).

(e) General Counsel; appointment and compensation.

There shall be in the Administration a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level IV of the Executive Schedule (section 5315 of Title 5).

(f) Additional officers; number; appointment and compensation; certain program assignments; competitive service provisions inapplicable.

(1) There are authorized to be in the Administration not more than nine additional officers who shall be appointed by the Administrator and shall receive compensation at the rate prescribed for offices and positions at level V of the Executive Schedule (section 5316 of Title 5).

(2) If any person, other than an officer within subsections (c), (d), or (e) of this section, is to be assigned principal responsibility for any program that shall be instituted in the Administration for either (i) allocation, (ii) pricing, (iii) rationing (if effected), or (iv) Federal and State coordination, he shall be one of the officers authorized by paragraph (1) of this subsection except that he shall be appointed by the President by and with the advice and consent of the Senate.

(3) Appointments to the positions described in this subsection may be made without regard to the provisions of Title 5 governing appointments in the competitive service.

(g) Functions of officers.

Subject to subsection (f) of this section, officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time.

(h) Order of succession.

The Administrator shall designate the order in which the Deputy Administrators and other officials shall act for and perform the functions of the Administrator during his absence or disability or in the event of a vacancy in his office.

(i) Conflict of interest; report to Congress; publication in Federal Register; other laws applicable.

(1) For the purposes of this chapter, section 208(b) of Title 18, relating to conflicts of interest, can be invoked and implemented only by the Administrator personally. Such subsection shall not be invoked as to any person unless and until—

(A) the Congress has received, ten days prior thereto, a written report containing notice of the Administrator's intention so to invoke such subsection, a detailed statement of the subject matter concerning which a conflict exists; and in the case of an exemption set forth in clause (1) of such subsection, the nature of an officer's or employee's financial interest; or in the case of an exemption set forth in clause (2) of such subsection, the name and statement of financial interest of each person who will come within such exemption; and

(B) such written report is published in the Federal Register.

(2) Nothing contained in this subsection shall affect in any way the applicability or operation of other laws relating to officers and employees of the United States Government.

(j) Dual employment.

No individual holding any of the positions described in subsections (a), (c), (d), and (e) of this section may also hold any other position in the executive branch during the same period. (Pub. L. 93–275, § 4, May 7, 1974, 88 Stat. 97.)

Effective and Termination Dates

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 764. Specific functions and purposes.

(a) Subject to the provisions and procedures set forth in this chapter, the Administrator shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy as are appropriate in connection with only those authorities or functions—

(1) specifically transferred to or vested in him by or pursuant to this chapter;

(2) delegated to him by the President pursuant to specific authority vested in the President by law; and

(3) otherwise specifically vested in the Administrator by the Congress.

(b) To the extent authorized by subsection (a) of this section, the Administrator shall—

(1) advise the President and the Congress with respect to the establishment of a comprehensive national energy policy in relation to the energy matters for which the Administration has responsibility, and, in coordination with the Secretary of State, the integration of domestic and foreign policies relating to energy resource management;

(2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public;

(3) develop effective arrangements for the participation of State and local governments in the resolution of energy problems;

(4) develop plans and programs for dealing with energy production shortages;

(5) promote stability in energy prices to the consumer, promote free and open competition in all aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise;

(6) assure that energy programs are designed and implemented in a fair and efficient manner so as to minimize hardship and inequity while assuring that the priority needs of the Nation are met;

(7) develop and oversee the implementation of equitable voluntary and mandatory energy conservation programs and promote efficiencies in the use of energy resources;

(8) develop and recommend policies on the import and export of energy resources;

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data;

(10) work with business, labor, consumer and other interests and obtain their cooperation;

(11) in administering any pricing authority, provide by rule, for equitable allocation of all component costs of producing propane gas. Such rules may require that (a) only those costs directly related to the production of profane may be allocated by any producer to such gas for purposes of establishing any price for propane, and (b) prices for propane shall be based on the prices for propane in effect on May 15, 1973. The Administrator shall not allow costs attributable to changes in ownership and movement of propane gas where, in the opinion of the Administrator, such changes in ownership and movement occur primarily for the purpose of establishing a higher price; and

(12) perform such other functions as may be prescribed by law.

(c)(1) The Administrator shall not exercise the discretion delegated to him by the President, pursuant to section 754 of this title, to submit to the Congress as one energy action any amendment to the regulation under section 753, pursuant to section 760a, which amendment exempts any oil, refined petroleum product, or refined product category from both the allocation and pricing provisions of the regulation under section 4 of such Act.

(2) Nothing in this subsection shall prevent the Administrator from concurrently submitting an energy action relating to price together with an energy action relating to allocation of the same oil, refined petroleum product, or refined product category (Pub. L. 93–275, § 5, May 7, 1974, 88 Stat. 98; amended Pub. L. 94–385, title I, § 102, Aug. 14, 1976, 90 Stat. 1127.)

Amendments

1976—Subsec. (c). Pub. L. 94–385 added subsec. (c).

§ 765. Transfer of functions.

(a) There are hereby transferred to and vested in the Administrator all functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department—

(1) as relate to or are utilized by the Office of Petroleum Allocation;

(2) as relate to or are utilized by the Office of Energy Conservation;

(3) as relate to or are utilized by the Office of Energy Data and Analysis; and

(4) as relate to or are utilized by the Office of Oil and Gas.

(b) There are hereby transferred to and vested in the Administrator all functions of the Chairman of the Cost of Living Council, the Executive Director of the Cost of Living Council, and the Cost of Living Council, and officers and components thereof, as relate to or are utilized by the Energy Division of the Cost of Living Council. (Pub. L. 93–275, § 6, May 7, 1974, 88 Stat. 100.)

§ 766. Administrative provisions.

(a) Officers and employees; appointment, employment, and compensation; authority and duties; positions in GS–16, 17, and 18; classification standards and procedures applicable; duration of authority; competitive service provisions partly inapplicable.

(1) The Administrator may appoint, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in him, and prescribe their authority and duties. In addition to the number of positions which may be placed in GS–16, 17, and 18 under existing law, not to exceed 91 positions may be placed in GS–16, 17, and 18 to carry out the functions under this chapter: *Provided,* That the total number of positions within the Administration in GS–16, 17, 18 shall not exceed 105: *And provided further,* That, except as provided in paragraph (2) of this subsection, the authority under this subsection shall be subject to the standards and procedures prescribed under Chapter 51 of Title 5, and shall continue only for the duration of the exercise of functions under this chapter.

(2) Twenty-five of the GS–16, 17, and 18 positions authorized by paragraph (1) of this subsection may be filled without regard to the provisions of Title 5 governing appointments in the competitive service.

(b) Experts and consultants; employment and compensation.

The Administrator may employ experts, expert witnesses, and consultants in accordance with section 3109 of Title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of Title 5 for persons in Government service employed intermittently.

(c) Rules, regulations, and procedures; Cost of Living Council, notification; quality of environment, publication of comments; emergency preclusion of review by Cost of Living Council.

The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided,* That:

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

(2) The review required by paragraph (1) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires making effective the action proposed to be taken at a date earlier than would permit the Administrator of the Environmental Protection Agency the five working days opportunity for prior comment required by paragraph (1). Notice of any such waiver shall be given to the Administrator of the Environmental Protection Agency and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as the Administrator determines will apprise such agency and the public of the reasons for such waiver.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

(d) Interagency cooperation; reimbursement provisions.

The Administrator may utilize, with their consent, the services, personnel, equipment, and facilities of Federal, State, regional, and local public agencies and instrumentalities, with or without reimbursement therefor, and may transfer funds made available pursuant to this chapter, to Federal, State, regional, and local public agencies and instrumentalities, as reimbursement for utilization of such services, personnel, equipment, and facilities.

(e) Seal; judicial notice.

The Administrator shall cause a seal of office to be made for the Administration of such design as he shall approve, and judicial notice shall be taken of such seal.

(f) Gifts; acceptance.

The Administrator may accept unconditional gifts or donations of money or property, real, personal, or mixed, tangible or intangible.

(g) Contract authority.

The Administrator may enter into and perform contracts, leases, cooperative agreements, or other similar transactions with any public agency or instrumentality or with any person, firm, association, corporation, or institution.

(h) Other necessary activities.

The Administrator may perform such other activities as may be necessary for the effective fulfillment of his administrative duties and functions.

(i) Rules, regulations, or orders; publication in Federal Register; comments; waiver of comment period; public notice, publication; views, oral presentation; transcript; adjustments; procedures respecting application and operation; administrative and judicial review; hearings: requests for action; public information; written opinions; jurisdiction of courts of appeals and district courts; defenses in any proceeding; removal of Federal questions; concurrent jurisdiction; procedures for State or local government agencies.

(1)(A) Subject to paragraphs (B), (C), and (D) of this subsection, the provisions of subchapter II of chapter 5 of Title 5 shall apply to any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of Title 5, issued pursuant to this chapter, including any such rule, regulation, or order of a State or local government agency, or officer thereof, issued pursuant to authority delegated by the Administrator.

(B) Notice of any proposed rule, regulation, or order described in paragraph (A) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In addition, public notice of all rules, regulations, or orders described in paragraph (A) which are promulgated by officers of a State or local government agency shall to the maximum extent practicable be achieved by publication of such rules, regulations, or orders in a sufficient number of newspapers of statewide circulation calculated to receive widest possible notice.

(C) In addition to the requirements of paragraph (B), if any rule, regulation, or order described in paragraph (A) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(D) Any officer or agency authorized to issue the rules, regulations, or orders described in paragraph (A) shall provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. Such officer or agency shall, within ninety days after the date of the enactment of the Federal Energy Administration Act Amendments of 1976, establish criteria and guidelines by which such special hardship, inequity, or unfair distribution of burdens shall be evaluated. Such officer or agency shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition. If any person is aggrieved or adversely affected by a denial of a request for adjustment under the preceding sentences, he may request a review of such denial by the agency and may obtain judicial review in accordance with paragraph (2) of this subsection when such a denial becomes final. The agency shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial, and where deemed advisable by the agency, for considering other requests for action under this paragraph, except that no review of a denial under this subparagraph shall be controlled by the same officer denying the adjustment pursuant to this subparagraph.

(E) In addition to the requirements of section 552 of Title 5, any agency authorized to issue the rules, regulations, or orders described in paragraph (A) shall make available to the public all internal rules and guidelines which may form the basis, in whole or in part, for any such rule, regulation, or order with such modifications as are necessary to insure confidentiality protected under such section 552. Such agency shall, upon written request of a petitioner filed after any grant or denial of a request for exception or exemption from rules or orders, furnish the petitioner with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial. Such opinions shall be made available to the petitioner and the public within thirty days of such request, with such modifications as are necessary to insure confidentiality of information protected under such section 552.

(F)(i) With respect to any rule or regulation of the Administrator the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(I) a single unit of local government or the residents thereof;

(II) a single geographic area within a State or the residents thereof; or

(III) a single State or the residents thereof;

the Administrator shall, in any case where he is required by law, or where he determines, to afford an opportunity for a hearing or the oral presentation of views, provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geo-

graphic area, or State described in subclauses (I) through (III), as the case may be.

(ii) For purposes of this subparagraph—

(I) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(II) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(iii) Nothing in this subparagraph shall be construed as requiring a hearing or an oral presentation of views where none is required by law or, in the absence of such a requirement, where the Administrator determines a hearing or oral presentation is not appropriate.

(2)(A) Judicial review of administrative rulemaking of general and national applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of general, but less than national, applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(B) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this chapter, or under rules, regulations, or orders issued thereunder, except any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter: *Provided*, That nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of Title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (1) any appropriate State court, or (2) without regard to the amount in controversy, the district courts of the United States.

(3) The Administrator may by rule prescribe procedures for State or local government agencies authorized by the Administrator to carry out functions under this chapter. Such procedures shall apply to such agencies in lieu of paragraph (1) of this subsection, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) at least ten days before taking the action.

(j) Information for independent regulatory agencies.

The Administration, in connection with the exercise of the authority under this chapter, shall be considered an independent Federal regulatory agency for the purposes of sections 3502 and 3512 of Title 44.

(k) The Administrator or his delegate may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against any person whose sole petroleum industry operation relates to the marketing of petroleum products, for any violation of any rule or regulation if—

(1) such civil action or order is based upon a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or rulings interpreting such rules or regulations, in effect on the date of the violation.

(Pub. L. 93–275, § 7, May 7, 1974, 88 Stat. 100; amended Pub. L. 94–385; title I, §§ 103, 104, 105, Aug. 14, 1976, 90 Stat. 1127.)

AMENDMENTS

1976—Subsec. (c)(1) and (2). Pub. L. 94–385, § 103, substantially revised these paragraphs.

Subsec. (i)(1)(D). Pub. L. 94–385, § 104, substantially revised this subparagraph.

Subsec. (k), Pub. L. 94–385, § 105, added subsection.

§ 767. Transitional and savings provisions.

(a) Continuance of effective status.

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Pending proceedings; orders, appeals, payments.

This chapter shall not affect any proceeding pending, at the time this chapter takes effect, before any department or agency (or component thereof) regarding functions which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals (except as provided in section 766(i)(2) of this title) shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions, and to the same extent, that such proceeding could have been discontinued if this chapter had not been enacted.

(c) Commencement of suits before effective date.

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

(d) Litigation; abatement prohibition; Federal parties.

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this chapter takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(e) Substitution of parties.

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Administrator, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator, or other official as the case may be, substituted.

(f) Judicial review; other requirements respecting notices, hearings, action upon record, and administrative review; conflicting provisions.

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred or delegated by this chapter shall apply to the performance of those functions by the Administrator, or any officer or component of the Administration. In the event of any inconsistency between the provisions of this subsection and section 766 of this title, the provisions of section 766 of this title shall govern.

(g) References in other laws deemed references to transferee offices or officers.

With respect to any function transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, Administrator, or other office or officers in which this chapter vests such functions.

(h) Presidential functions, authorities, and delegations unaffected.

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegations of functions.

(i) References to other provisions deemed references to such provisions as amended or supplemented.

Any reference in this chapter to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented. (Pub. L. 93–275, § 8, May 7, 1974, 88 Stat. 103.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in the text, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 768. Incidental transfers.

The Director of the Office of Management and Budget is authorized and directed to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with functions which are transferred by or which revert under this chapter, as the Director deems necessary and appropriate to accomplish the intent and purpose of this chapter. (Pub.

L. 93–275, § 9, May 7, 1974, 88 Stat. 105.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 769. Definitions.

As used in this chapter—

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

(Pub. L. 93–275, § 10, May 7, 1974, 88 Stat. 105.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 770. Appointments.

(a) Interim funds.

Funds available to any department or agency (or any official or component thereof), and lawfully authorized for any of the specific functions which are transferred to the Administrator by this chapter, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this chapter until such times as funds for that purpose are otherwise available.

(b) Interim appointments.

In the event that any officer required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this chapter, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this chapter, or any officer who was performing essentially the same functions immediately prior to the effective date of this chapter to act in such office until the office is filled as provided in this chapter: *Provided,* That any officer acting pursuant to the provisions of this subsection may act no longer than a period of thirty days unless during such period his appointment as such an officer is submitted to the Senate for its advice and consent.

(c) Nontemporary personnel; transferee rights for one year.

Transfer of nontemporary personnel pursuant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation, except for cause, for one year after such transfer.

(d) Compensation of new position at not less than provided for in Executive Schedule for previous position in cases of appointees without break in service.

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of Title 5, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position. (Pub. L. 93–275, § 11, May 7, 1974, 88 Stat. 105.)

§ 771. Comptroller General, powers and duties.

(a) Scope of activities; monitoring activity; data to Comptroller General from Administration; reports and recommendations to Congress.

For the duration of this chapter, the Comptroller General of the United States shall monitor and evaluate the operations of the Administration including its reporting activities. The Comptroller General shall (1) conduct studies of existing statutes and regulations governing the Administration's programs; (2) review the policies and practices of the Administration; (3) review and evaluate the procedures followed by the Administrator in gathering, analyzing, and interpreting energy statistics, data, and information related to the management and conservation of energy, including but not limited to data related to energy costs, supply, demand, industry structure, and environmental impacts; and (4) evaluate particular projects or programs. The Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this chapter and shall report to the Congress at such times as he deems appropriate with respect to the Administration's programs, including his recommendations for modifications in existing laws, regulations, procedures, and practices.

(b) Access to material and written energy information from owners or operators of facilities or business premises engaged in energy matters; scope of information.

The Comptroller General or any of his authorized representatives in carrying out his responsibilities under this section may request access to any books, documents, papers, statistics, data, records, and information of any person owning or operating facilities or business premises who is engaged in any phase of energy supply or major energy consumption, where such material relates to the purposes of this chapter, including but not limited to energy costs, demand, supply, industry structure, and environmental impacts. The Comptroller General may request such person to submit in writing such energy information as the Comptroller General may prescribe.

(c) Access to material and information from recipients of Federal funds or assistance under Federal transactions.

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any recipients of Federal funds or as-

sistance under contracts, leases, cooperative agreements, or other transactions entered into pursuant to subsection (d) or (g) of section 766 of this title which in the opinion of the Comptroller General may be related or pertinent to such contracts, leases, cooperative agreements, or similar transactions.

(d) Subpenas; committee resolution; issuance; production of evidence.

To assist in carrying out his responsibilities under this section, the Comptroller General may, with the concurrence of a duly established committee of Congress having legislative or investigative jurisdiction over the subject matter and upon the adoption of a resolution by such a committee which sets forth specifically the scope and necessity therefor, and the specific identity of those persons from whom information is sought, sign and issue subpenas requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section.

(e) Enforcement of subpenas; jurisdiction; order for production of evidence; contempt.

In case of disobedience to a subpena issued under subsection (d) of this section, the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpena issued by the Comptroller General, issue an order requiring such person to produce the books, documents, papers, statistics, data, records, or information; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(f) Availability to public of reports submitted to Congress; prohibited disclosures: confidential information and trade secrets; preservation of confidentiality in disclosures to Government.

Reports submitted by the Comptroller General to the Congress pursuant to this section shall be available to the public at reasonable cost and upon identifiable request. The Comptroller General may not disclose to the public any information which concerns or relates to a trade secret or other matter referred to in section 1905 of Title 18, except that such information shall be disclosed by the Comptroller General or the Administrator, in a manner designed to preserve its confidentiality—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) to committees of congress upon request; and

(3) to a court in any judicial proceeding under court order.

(Pub. L. 93–275, § 12, May 7, 1974, 88 Stat. 106.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 772. Administrator's information-gathering power.

(a) Comprehensive and particular energy information; categorical groupings; monitoring activity and policy guidance.

The Administrator shall collect, assemble, evaluate, and analyze energy information by categorical groupings, established by the Administrator, of sufficient comprehensiveness and particularity to permit fully informed monitoring and policy guidance with respect to the exercise of his functions under this chapter.

(b) Information and data to Administrator from owners or operators of facilities or business premises engaged in energy matters.

All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the Administrator such information and periodic reports, records, documents, and other data, relating to the purposes of this chapter, including full identification of all data and projections as to source, time, and methodology of development, as the Administrator may prescribe by regulation or order as necessary or appropriate for the proper exercise of functions under this chapter.

(c) General or special orders for filing reports or answers in writing to specific questions, surveys, or questionnaires; oath or otherwise; filing period.

The Administrator may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under this chapter. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe.

(d) Investigations, physical inspections, inventories and samples, copies, and interrogations.

The Administrator, to verify the accuracy of information he has received or otherwise to obtain information necessary to perform his functions under this chapter, is authorized to conduct investigations, and in connection therewith, to conduct, at reasonable times and in a reasonable manner, physical inspections at energy facilities and business premises, to inventory and sample any stock of fuels or energy sources therein, to inspect and copy records, reports, and documents from which energy information has been or is being compiled, and to question such persons as he may deem necessary.

(e) Subpenas; attendance and testimony of witnesses; production of evidence; enforcement; judicial orders; contempt.

(1) The Administrator, or any of his duly authorized agents, shall have the power to require by subpena the attendance and testimony of witnesses, and the production of all information, documents,

reports, answers, records, accounts, papers, and other data and documentary evidence which the Administrator is authorized to obtain pursuant to this section.

(2) Any appropriate United States district court may, in case of contumacy or refusal to obey a subpena issued pursuant to this section, issue an order requiring the party to whom such subpena is directed to appear before the Administration and to give testimony touching on the matter in question, or to produce any matter described in paragraph (1) of this subsection, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(f) Federal information concerning energy resources on Federal lands; scope of information.

The Administrator shall collect from departments, agencies and instrumentalities of the executive branch of the Government (including independent agencies), and each such department, agency, and instrumentality is authorized and directed to furnish, upon his request, information concerning energy resources on lands owned by the Government of the United States. Such information shall include, but not be limited to, quantities of reserves, current or proposed leasing agreements, environmental considerations, and economic impact analyses.

(g) With respect to any person who is subject to any rule, regulation, or order promulgated by the Administrator or to any provision of law the administration of which is vested in or transferred or delegated to the Administrator, the Administrator may require, by rule, the keeping of such accounts or records as he determines are necessary or appropriate for determining compliance with such rule, regulation, order, or any applicable provision of law.

(h) In exercising his authority under this Act and any other provision of law relating to the collection of energy information, the Administrator shall take into account the size of businesses required to submit reports with the Administrator so as to avoid, to the greatest extent practicable, overly burdensome reporting requirements on small marketers and distributors of petroleum products and other small business concerns required to submit reports to the Administrator.

(i) Any failure to make information available to the Administrator under subsection (b), any failure to comply with any general or special order under subsection (c), or any failure to allow the Administrator to act under subsection (d) shall be subject to the same penalties as any violation of section 796 of this title or any rule, regulation, or order issued under such section. (Pub. L. 93–275, § 13, May 7, 1974, 88 Stat. 107; amended Pub. L. 94–385, title I, §§ 107 and 108, Aug. 14, 1976, 90 Stat. 1129.)

AMENDMENTS

1976—Subsec. (g) and (h). Pub. L. 94–385, § 107 added subsec. (g) and (h).

Subsec. (i). Pub. L. 94–385, § 108, added subsec. (i).

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 773. Public disclosure of information.

(a) Analyses, data, information, reports, and summaries; objectives of disclosures.

The Administrator shall make public, on a continuing basis, any statistical and economic analyses, data, information, and whatever reports and summaries are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts.

(b) Freedom of Information Act applicable; disclosure of confidential information or trade secrets; disclosure of matter included in public annual reports to Securities and Exchange Commission and matter excepted from such disclosure.

Subject to the provisions of this chapter, section 552 of Title 5 shall apply to public disclosure of information by the Administrator: *Provided*, That notwithstanding said section, the provisions of section 1905 of Title 18, or any other provision of law, (1) all matters reported to, or otherwise obtained by, any person exercising authority under this chapter containing trade secrets or other matter referred to in section 1905 of Title 18, may be disclosed to other persons authorized to perform functions under this chapter solely to carry out the purposes of the chapter, or when relevant in any proceeding under this chapter, and (2) the Administrator shall disclose to the public, at a reasonable cost, and upon a request which reasonably describes the matter sought, any matter of the type which could not be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 78m or 78o(d) of this title by a business enterprise exclusively engaged in the manufacture or sale of a single product, unless such matter concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a business enterprise.

(c) Guidelines and procedures for handling information pertaining to individuals; access of individuals to such personal information.

To protect and assure privacy of individuals and confidentiality of personal information, the Administrator is directed to establish guidelines and procedures for handling any information which the Administration obtains pertaining to individuals. He shall provide, to the extent practicable, in such guidelines and procedures a method for allowing any such individual to gain access to such information pertaining to himself. (Pub. L. 93–275, § 14, May 7, 1974, 88 Stat. 108.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 774. Reports and recommendations.

(a) Administrator's initial submittal to President and Congress.

Not later than one year after the effective date of this chapter, the Administrator shall submit a report to the President and Congress which will provide a complete and independent analysis of actual oil and gas reserves and resources in the United States and its Outer Continental Shelf, as well as of the existing productive capacity and the extent to which such capacity could be increased for crude oil and each major petroleum product each year for the next ten years through full utilization of available technology and capacity. The report shall also contain the Administration's recommendations for improving the utilization and effectiveness of Federal energy data and its manner of collection. The data collection and analysis portion of this report shall be prepared by the Federal Trade Commission for the Administration. Unless specifically prohibited by law, all Federal agencies shall make available estimates, statistics, data and other information in their files which, in the judgment of the Commission or Administration, are necessary for the purposes of this subsection.

(b) Administrator's annual report to Congress; contents.

The Administrator shall prepare and submit directly to the Congress and the President every year after May 7, 1974, a report which shall include—

(1) a review and analysis of the major actions taken by the Administrator;

(2) an analysis of the impact these actions have had on the Nation's civilian requirements for energy supplies for materials and commodities;

(3) a projection of the energy supply for the midterm and long term for each of the major types of fuel and the potential size and impact of any anticipated shortages, including recommendations for measures to—

(A) minimize deficiencies of energy supplies in relation to needs;

(B) manitain the health and safety of citizens;

(C) maintain production and employment at the highest feasible level;

(D) equitably share the burden of shortages among individuals and business firms; and

(E) minimize any distortion of voluntary choices of individuals and firms;

(4) a summary listing of all recipients of funds and the amount thereof within the preceding period;

(5) a summary listing of information-gathering activities conducted under section 772 of this title; and

(6) an analysis of the energy needs of the United States and the methods by which such needs can be met, including both tax and nontax proposals and energy conservation strategies.

In the first annual report submitted after the date of enactment of the Energy Conservation and Production Act, the Administrator shall include in such report with respect to the analysis referred to in paragraph (6) a specific discussion of the utility and relative benefits of employing a Btu tax as a means for obtaining national energy goals.

(c) Citizen fuel use; summer guidelines.

Not later than thirty days after the effective date of this chapter, the Administrator shall issue preliminary summer guidelines for citizen fuel use.

(d) Administrator's interim reports to Congress.

The Administrator shall provide interim réports to the Congress from time to time and when requested by committees of Congress.

(e) The analysis referred to in subsection (b) (6) shall include, for each of the next five fiscal years following the year in which the annual report is submitted and for the tenth fiscal year following such year—

(1) the effect of various conservation programs on such energy needs;

(2) the alternate methods of meeting the energy needs identified in such annual report and of—

(A) the relative capital and other economic costs of each such method;

(B) the relative environmental, national security, and balance-of-trade risks of each such method;

(C) the other relevant advantages and disadvantages of each such method; and

(3) recommendations for the best method or methods of meeting the energy needs identified in such annual report and for legislation needed to meet those needs.

Notwithstanding the termination of this Act, the President shall designate an appropriate Federal agency to conduct the analysis specified in subsection (b)(6). (Public Law 93–275, § 15, May 7, 1974, 88 Stat. 108; amended Public Law 94–385, title I, § 109, Aug. 14, 1976, 90 Stat. 1130.)

AMENDMENTS

1976—Subsec. (a), (b), (c), and (d), Public Law 94–385 struck out former subsec. (a) and redesignated subsec. (b), (c), (d), and (e) as subsec. (a), (b), (c), and (d), respectively.

Subsec. (b). Public Law 94–285 added paragraph (6).

Subsec. (e) Public Law 94–385 added subsec. (e).

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating June 30, 1976, see section 30 of Pub. L. 93–275, set out as a note under section 761 of this title.

§ 775. Sex discrimination; enforcement; other legal remedies.

No individual shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and

will not prejudice or remove any other legal remedies available to any individual alleging discrimination. (Pub. L. 93–275, § 16, May 7, 1974, 88 Stat.109.)

§ 776. Advisory committees.

(a) Representation of points of view and functions, government, and regulatory utility commissions.

Whenever the Administrator shall establish or utilize any board, task force, commission, committee, or similar group, not composed entirely of full-time Government employees, to advise with respect to, or to formulate or carry out, any agreement or plan of action affecting any industry or segment thereof, the Administrator shall endeavor to insure that each such group is reasonably representative of the various points of view and functions of the industry and users affected, including those of residential, commercial, and industrial consumers, and shall include, where appropriate, representation from both State and local governments, and from representatives of State regulatory utility commissions, selected after consultation with the respective national associations.

(b) Public meetings; participation of interested persons; closed meetings; determination, national security, reasons.

Each meeting of such board, task force, commission, committee, or similar group, shall be open to the public, and interested persons shall be permitted to attend, appear before, and file statements with, such group, except that the Administrator may determine that such meeting shall be closed in the interest of national security. Such determination shall be in writing, shall contain a detailed explanation of reasons in justification of the determination, and shall be made available to the public.

(c) Public inspection and copying of documents.

All records, reports, transcripts, memoranda, and other documents, which were prepared for or by such group, shall be available for public inspection and copying at a single location in the offices of the Administration.

(d) Federal Advisory Committee Act applicable.

Advisory committees established or utilized pursuant to this Act shall be governed in full by the provisions of the Federal Advisory Committee Act, except as inconsistent with this section. (Pub. L. 93–275, § 17, May 7, 1974, 88 Stat. 110.)

§ 777. Economic analysis of proposed actions.

(a) Scope of analysis.

In carrying out the provisions of this chapter, the Administrator shall, to the greatest extent practicable, insure that the potential economic impacts of proposed regulatory and other actions are evaluated and considered, including but not limited to an analysis of the effect of such actions on—

(1) the fiscal integrity of State and local governments;

(2) vital industrial sectors of the economy;

(3) employment, by industrial and trade sectors, as well as on a national, regional, State, and local basis;

(4) the economic vitality of regional, State, and local areas;

(5) the availability and price of consumer goods and services;

(6) the gross national product;

(7) low and middle income families as defined by the Bureau of Labor Statistics;

(8) competition in all sectors of industry; and

(9) small business.

(b) Conservation measures.

The Administrator shall develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry.

(c) Explicit analyses; interagency cooperation; other review and cause of action provisions.

Such analyses shall, wherever possible, be made explicit, and to the extent possible, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses and all Federal agencies are authorized and directed to cooperate with the Administrator in preparing such analyses: *Provided*, That the Administrator's actions pursuant to this section shall not create any right of review or cause of action except as would otherwise exist under other provisions of law.

(d) Monitoring economic impact of energy actions; report and recommendations to Congress.

The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with an annual report on the impact of the energy shortage and the Administrator's actions on employment and the economy. Such report shall contain recommendations as to whether additional Federal programs of employment and economic assistance should be put into effect to minimize the impact of the energy shortage and any actions taken.

(e) Industrial or regional discrimination; equal bearing of costs and burdens of meeting energy shortages.

The Administrator shall formulate and implement regulatory and other actions in a manner (1) which does not unduly discriminate against any industry or any region of the United States; and (2) designed to insure that, to the greatest extent possible, the costs and burdens of meeting energy shortages shall be borne equally by every sector and segment of the country and of the economy. (Public Law 93–275, § 18, May 7, 1974, 88 Stat. 110. amended Public Law 94–385, title I, § 109(d) Aug. 14 1976, 90 Stat. 1130.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 90–385 substituted "an annual report" for "a report every six months".

§ 778. Management oversight review; report to Administrator.

The Administrator may, for a period not to exceed thirty days in any one calendar year, provide for the exercise or performance of a management oversight review with respect to the conduct of any Federal or State (with consent of the Governor) energy program conducted pursuant to this chapter. Such review may be conducted by contract or by any Federal department or agency. A written report shall be submited to the Administrator concerning the findings of the review. (Pub. L. 93–275, § 19, May 7, 1974, 88 Stat. 111.)

§ 779. Coordination with, and technical assistance to, State governments.

(a) Report to Congress and State governments: organization of Administration; report to the public, Congress and State governments: scope of nontechnical report; comments of State governments respecting rules, regulations, or policies and programs; energy shortages, status reports; information clearing house.

The Administrator shall—

(1) coordinate Federal energy programs and policies with such programs and policies of State governments by providing—

(A) within sixty days of the effective date of this chapter, the Congress and State governments with a report on the manner in which he has organized the Administration based upon the functions delegated by the President or assigned to the Administrator by this chapter or under the authority of other Acts; and

(B) within one hundred and twenty days of the effective date of this chapter, the public, State governments, and all Members of the Congress with a report in nontechnical language which—

(i) describes the functions performed by the Administration;

(ii) sets forth in detail the organization of the Administration, the location of its offices (including regional, State, and local offices), the names and phone numbers of Administration officials, and other appropriate information concerning the operation of the Administration;

(iii) delineates the role that State, and Federal governments will or may perform in achieving the purposes of this chapter; and

(iv) provides the public with a clear understanding of their duties and obligations, rights, and responsibilities under any of the programs or functions of the Administration;

(2) before promulgating any rules, regulations, or policies, and before establishing any programs under the authority of this chapter, provide, where practicable, a reasonable period in which State governments may provide written comments if such rules, regulations, policies, or programs substantially affect the authority or responsibility of such State governments;

(3) provide, in accordance with the provisions of this chapter, upon request, to State governments all relevant information he possesses concerning the status and impact of energy shortages, the extent and location of available supplies and shortages of crude oil, petroleum products, natural gas, and coal, within the distribution area serving that particular State government; and

(4) provide for a central clearinghouse for Federal agencies and State governments seeking energy information and assistance from the Federal Government.

(b) Technical assistance; task forces; conferences: expenses of participation; model legislation; uniform criteria, procedures, and forms for grant or contract applications for State government energy proposals.

Pursuant to his responsibility under this section, the Administrator shall—

(1) provide technical assistance—including advice and consultation relating to State programs, and, where necessary, the use of task forces of public officials and private persons assigned to work with State governments—to assist State governments in dealing with energy problems and shortages and their impact and in the development of plans, programs, and policies to meet the problems and shortages so identified;

(2) convene conferences of State and Federal officials, and such other persons as the Administrator designates, to promote the purposes of this chapter, and the Administrator is authorized to pay reasonable expenses incurred in the participation of individuals in such conferences;

(3) draft and make available to State governments model legislation with respect to State energy programs and policies; and

(4) promote the promulgation of uniform criteria, procedures, and forms for grant or contract applications for energy proposals submitted by State governments.

(Pub. L. 93–275, § 20, May 7, 1974, 88 Stat. 111.)

§ 780. Office of Private Grievances and Redress.

(a) Establishment; director; statement of purpose.

The Administrator shall establish and maintain an Office of Private Grievances and Redress, headed by a director, to receive and evaluate petitions filed in accordance with subsection (b) of this section, and to make recommendations to the Administrator for appropriate action.

(b) Petition for special redress, relief, or other extraordinary assistance; nature of remedy.

Any person, adversely affected by any order, rule, or regulation issued by the Administrator in carrying out the functions assigned to him under this chapter, may petition the Administrator for special redress, relief, or other extraordinary assistance, apart from, or in addition to, any right or privilege to seek redress of grievances provided in section 766 of this title.

(c) Report and recommendations to Congress.

The Administrator shall report quarterly to the

Congress on the nature and number of the grievances which have been filed, and the action taken and relief provided, pursuant to this section; and he shall make recommendations to the Congress from time to time concerning legislative or administrative actions which may be taken to better assist persons adversely affected by the energy shortages and to distribute more equitably the burdens resulting from any measures adopted, or actions taken, by him. (Pub. L. 93–275, § 21, May 7, 1974, 88 Stat. 112.)

§ 781. Comprehensive energy plan.

(a) Report to President and Congress; analytical justification; scope of analysis.

Pursuant and subject to the provisions and procedures set forth in this chapter, the Administrator shall, within six months from May 7, 1974, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this chapter. Such plan shall be accompanied by full analytical justification for the actions proposed therein. Such analysis shall include, but not be limited to—

(1) estimates of the energy savings of each action and of the program as a whole;

(2) estimates of any windfall losses and gains to be experienced by corporations, industries, and citizens grouped by socioeconomic class;

(3) estimates of the impact on supplies and consumption of energy forms consequent to such price changes as are or may be proposed; and

(4) a description of alternative actions which the Administrator has considered together with a rationale in explanation of the rejection of any such alternatives in preference to the measures actually proposed.

(b) Alterations; analytical justifications.

The Administrator may, from time to time, modify or otherwise alter any such plan, except that, upon request of an appropriate committee of the Congress, the Administrator shall supply analytical justifications for any such alterations.

(c) Monitoring activity.

The Administrator shall be responsible for monitoring any such plans as are implemented with respect to their effectiveness in achieving the anticipated benefits. (Pub. L. 93–275, § 22, May 7, 1974, 88 Stat. 113.)

§ 782. Petrochemical report to Congress.

(a) Scope of report.

Within ninety days after he has entered upon the office of Administrator or has been designated by the President to act in such office, the Administrator, or acting Administrator, as the case may be, with the assistance of the Department of Commerce, the Cost of Living Council, and the United States Tariff Commission shall, by written report, inform the Congress as to the—

(1) effect of current petrochemical prices upon the current level of petrochemical exports, and export levels expected for 1975;

(2) effect of current and expected 1975 petrochemical export levels upon domestic petrochemical raw materials and products available to petrochemical producers, converters, and fabricators currently and in 1975;

(3) current contribution of petrochemical imports to domestic supplies and the expected contributions in 1975;

(4) anticipated economic effects of current and expected 1975 levels of domestic supplies of petrochemicals upon domestic producers, converters, and fabricators of petrochemical raw materials and products; and

(5) exact nature, extent, and sources of data and other information available to the Federal Government regarding the matters set forth in paragraphs (1) through (4) of this subsection, including the exact nature, extent, and sources of such data and information utilized in connection with the report required by this subsection.

(b) Definition of "petrochemical."

As used in this section, the term "petrochemical" includes organic chemicals, cyclic intermediates, plastics and resins, synthetic fibers, elastomers, organic dyes, organic pigments, detergents, surface active agents, carbon black and ammonia. (Pub. L. 93–275, § 23, May 7, 1974, 88 Stat. 113.)

§ 783. Hydroelectric generating facilities; lists, transmittal to Congress; construction schedule and cost estimates for expedited construction program; prospective accomplishments from expedited completion of facilities; statement of appropriated but not obligated funds.

Within ninety days of the effective date of this chapter, the Administrator of the Federal Energy Administration, in consultation with the Secretary of the Interior and the Secretary of the Army, shall—

(1) transmit to the Congress—

(A) a list of hydroelectric generating facilities and electric power transmission facilities which have been authorized for construction by the Congress and which are not yet completed, and

(B) a list of opportunities to increase the capacity of existing hydroelectric generating facilities, and

(2) provide, for each such facility which is listed—

(A) a construction schedule and cost estimates for an expedited construction program which would make the facility available for service at the earliest practicable date, and

(B) a statement of the accomplishments which could be provided by the expedited completion of each facility and a statement of any funds which have been appropriated but not yet obligated.

(Pub. L. 93–275, § 24, May 7, 1974, 88 Stat. 114.)

§ 784. Exports of coal and refined petroleum products.

(a) File concerning export transactions, sales, exchanges or shipments: establishment and maintenance; scope of information.

The Administrator is authorized and directed to

establish and maintain a file which shall contain information concerning every transaction, sale, exchange or shipment involving the export from the United States to a foreign nation of coal, crude oil, residual oil or any refined petroleum product. Information to be included in the file shall be current and shall include, but shall not be limited to, the name of the exporter (including the name or names of the holders of any beneficial interests), the volume and type of product involved in the export transaction, the manner of shipment and identification of the vessel or carrier, the destination, the name of the purchaser if a sale, exchange or other transaction is involved, and a statement of reasons justifying the export.

(b) Information and report to committee of Congress or head of Federal agency from Administrator; exception: disclosure detrimental to national security.

Upon request of any committee of Congress or the head of any Federal agency, the Administrator shall promptly provide any information maintained in the file and a report thereon to such committee, or agency head, except where the President finds such disclosure to be detrimental to national security.

(c) Information to Administrator from Federal agency.

Notwithstanding any other provision of law, any Federal agency which collects or has information relevant to the functions required by this section shall make such information available to the Administrator. (Pub. L. 93–275, § 25, May 7, 1974, 88 Stat. 114.)

(d) The Administrator shall not be required to collect independently information described in subsection (a) if he can secure the information described in subsection (a) from other Federal agencies and the information secured from such agencies is available to the Congress pursuant to a request under subsection (b). (Public Law 93–275, § 25, May 7, 1974, 88 Stat. 114; amended Pub. L. 94–385, title I, § 111 Aug. 14 1976, 90 Stat. 1132.)

AMENDMENTS

1976—Subsec. (d) Public Law 94–385 added subsec. (d).

§ 785. Foreign ownership; comprehensive review; sources of information; report to Congress; monitoring activity.

The Administrator shall conduct a comprehensive review of foreign ownership of, influence on, and control of domestic energy sources and supplies. Such review shall draw upon existing information, where available, and any independent investigation necessary by the Administration. The Administrator shall, on or before the expiration of the one hundred and eighty day period following the effective date of this chapter, report to the Congress in sufficient detail so as to apprise the Congress as to the extent and forms of such foreign ownership of, influence on, and control of domestic energy sources and supplies, and shall thereafter continue to monitor such ownership, influence and control. (Pub. L. 93–275, § 26, May 7, 1974, 88 Stat. 115.)

§ 786. Reversion.

Upon the termination of this chapter, any functions or personnel transferred by this chapter shall revert to the department, agency, or office from which they were transferred. An officer or employee of the Federal Government who is appointed, without break in service of one or more workdays, to any position for carrying out functions under this chapter is entitled, upon separation from such position other than for cause, to reemployment in the position occupied at the time of appointment, or in a position of comparable grade and salary. (Pub. L. 93–275, § 28, May 7, 1974, 88 Stat. 115.)

25. Federal Land Policy and Management Act of 1976

Pub. L. 94–579 (90 Stat. 2743)

AN ACT

To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the lands; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976."

DECLARATION OF POLICY

SEC. 102. (a) The Congress declares that it is the policy of the United States that—

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate

States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

DEFINITIONS

SEC. 103. Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act—

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title V of this Act.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources: a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in title V of this Act.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131–1136).

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(l) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) The term "Bureau means the Bureau of Land Management.

(o) The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock.

TITLE II—LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

INVENTORY AND IDENTIFICATION

SEC. 201. (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

LAND USE PLANNING

SEC. 202. (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values:

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended, and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keeps appraised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) Any classification of public lands or any land use plan in effect on the date of enactment of this Act is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318–2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 204 or other action pursuant to applicable law: *Provided*, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

SALES

SEC. 203. (a) A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 202 of this Act, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

(b) Where the Secretary determines that land to be conveyed under clause (3) of subsection (a) of this section is of agricultural value and is desert in character, such land shall be conveyed either under the sale authority of this section or in accordance with other existing law.

(c) Where a tract of the public lands in excess of two thousand five hundred acres has been designated for sale, such sale may be made only after the end of the ninety days (not counting

days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the day the Secretary has submitted notice of such designation to the Senate and the House of Representatives, and then only if the Congress has not adopted a concurrent resolution stating that such House does not approve of such designation. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the designation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same designation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(d) Sales of public lands shall be made a a price not less than their fair market value as determined by the Secretary.

(e) The Secretary shall determine and establish the size of tracts of public lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract which is judged by the Secretary to be chiefly valuable for agriculture is sold, its size shall be no larger than necessary to support a family-sized farm.

(f) Sales of public lands under this section shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or public policies, including but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

(1) the State in which the land is located;

(2) the local government entities in such State which are in the vicinity of the land;

(3) adjoining landowners;

(4) individuals; and

(5) any other person.

(g) The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bidding at his invitation no later than thirty days after the receipt of such offer or, in the case of a tract in excess of two thousand five hundred acres, at the end of thirty days after the end of the ninety-day period provided in subsection (c) of this section, whichever, is later, unless the offeror waives his right to a decision within such thirty-day period. Prior to the expiration of such periods the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines that consummation of the sale would not be consistent with this Act or other applicable law.

WITHDRAWALS

SEC. 204. (a) On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

(b)(1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c)(1) On and after the dates of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) be-

ginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calender days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees:

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(d) A withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion or upon request by a department or an agency head—

(1) for such period of time as he deems desirable for a resource use; or

(2) for a period of not more than twenty years for any other use, including but not limited to use for administrative sites, location of facilities, and other proprietary purposes; or

(3) for a period of not more than five years to preserve such tract for a specific use then under consideration by the Congress.

(e) When the Secretary determines, or when the Committee on Interior and Insular Affairs of either the House of Representatives or the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provisions of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with the Committees on Interior and Insular Affairs of the Senate and the House of Representatives. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable, and (b)(1) of this section. The information required in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) All withdrawals and extensions thereof,

whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d), whichever is applicable, and only if the Secretray determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate.

(g) All applications for withdrawal pending on the date of approval of this Act shall be processed and adjudicated to conclusion within fifteen years of the date of approval of this Act, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date.

(h) All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under subsection (e) of this section) shall be promulgated after an opportunity for a public hearing.

(i) In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) of this section apply.

(j) The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433); or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to the date of approval of this Act or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd(a)).

(k) There is hereby authorized to be appropriated the sum of $10,000,000 for the purpose of processing withdrawal applications pending on the effective date of this Act, to be available until expended.

(l)(1) The Secretary shall, within fifteen years of the date of enactment of this Act, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion

shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) There are herby authorized to be appropriated not more than $10,000,000 for the purpose of paragraph (1) of this subsection to be available until expended to the Secretary and to the heads of other departments and agencies which will be involved.

ACQUISITIONS

SEC. 205. (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided,* That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

(b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) Lands and interests in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to the first section of the Act of June 29, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315) (commonly known as the "Taylor Grazing Act"), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto.

EXCHANGES

SEC. 206. (a) A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided,* That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) In exercising the exchange authority granted by subsection (a) or by section 205(a) of this Act, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

(c) Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such System.

QUALIFIED CONVEYEES

SEC. 207. No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States.

CONVEYANCES

SEC. 208. The Secretary shall issue all patents or other documents of conveyance after any disposal authorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 206(b) of this Act shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided,* That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable Federal or State law or State land use plans: *Provided further,* That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs.

RESERVATION AND CONVEYANCE OF MINERALS

SEC. 209. (a) All conveyances of title issued by the Secretary, except those involving land exchanges provided for in section 206, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (b).

(b)(1) The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section—

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided,* That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(ii) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(4) Moneys paid to the Secretary for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current.

COORDINATION WITH STATE AND LOCAL GOVERNMENTS

SEC. 210. At least sixty days prior to offering for sale or otherwise conveying public lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance. The Secretary shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands.

OMITTED LANDS

SEC. 211. OMITTED LANDS.—(a) The Secretary is hereby authorized to convey to States or their political subdivisions under the Recreation and Public Purposes Act (44 Stat. 741 as amended; 43 U.S.C. 869 et seq.), as amended, but without regard to the acreage limitations contained therein, unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey. *Provided, however,* That such island may be surveyed at the request of the applicant State or its political subdivision if such State or subdivision donates money or services to the Secretary for such survey, the Secretary accepts such money or services, and such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management. Any such island so surveyed shall not be conveyed without approval of such survey by the Secretary prior to the conveyance.

(b)(1) The Secretary is authorized to convey to States and their political subdivisions under the Recreation and Public Purposes Act, but without regard to the acreage limitations contained therein, lands other than islands determined by him after survey to be public lands of the United States er-

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roneously or fraudulently omitted from the original surveys (hereinafter referred to as "omitted lands"). Any such conveyance shall not be made without a survey: *Provided,* That the prospective recipient may donate money or services to the Secretary for the surveying necessary prior to conveyance if the Secretary accepts such money or sevices, such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management, and such survey is approved by the Secretary prior to the conveyance.

(2) The Secretary is authorized to convey to the occupant of any omitted lands which, after survey, are found to have been occuplied and developed for a five-year period prior to January 1, 1975, if the Secretary determines that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyance under this subparagraph shall be made at not less than the fair market value of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

(c) (1) No conveyance shall be made pursuant to this section until the relevant State government, local government, and areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262) and/or title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4) have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(2) The provisions of section 210 of this Act shall be applicable to all conveyance under this section.

(d) The final sentence of section 1(c) of the Recreation and Public Purposes Act shall not be applicable to conveyances under this section.

(e) No conveyance pursuant to this section shall be used as the basis for determining the baseline between Federal and State ownership, the boundary of any State for purposes of determining the extent of a State's submerged lands or the line of demarcation of Federal jurisdiction, or any similar or related purpose.

(f) The provisions of this section shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

(g) Nothing in this section shall supersede the provisions of the Act of December 22, 1928 (45 Stat. 1069, 43 U.S.C. 1068), as amended, and the Act of May 31, 1962 (76 Stat. 89), or any other Act authorizing the sale of specific omitted lands.

RECREATION AND PUBLIC PURPOSES ACT

SEC. 212. The Recreation and Public Purposes Act of 1926 (44 Stat. 741, as amended; 43 U.S.C. 869–4), as amended, is further amended as follows:

(a) The second sentence of subsection (a) of the first section of that Act (43 U.S.C. 869(a)) is amended to read as follows: "Before the land may disposed of under this Act it must be shown to the satisfaction of the Secretary that the land is to be used for an established or definitely proposed project, that the land involved is not of national significance nor more than is reasonably necessary for the proposed use, and that for proposals of over 640 acres comprehensive land use plans and zoning regulations applicable to the area in which the public lands to be disposed of are located have been adopted by the appropriate State or local authority. The Secretary shall provide an opportunity for participation by affected citizens in disposals under this Act, including public hearings or meetings where he deems it appropriate to provide public comments, and shall hold at least one public meeting on any proposed disposal of more than six hundred forty acres under this Act."

(b) Subsection (b)(i) of the first section of that Act (43 U.S.C. 869(b)) is amended to read as follows:

"(b) Conveyances made in any one calendar year shall be limited as follows:

"(i) For recreational purposes:

"(A) To any State or the State park agency or any other agency having jurisdiction over the State park system of such State designated by the Governor of that State as its sole representative for acceptance of lands under this provision, hereinafter referred to as the State, or to any political subdivision of such State, six thousand four hundred acres, and such additional acreage as may be needed for small roadside parks and rest sites of not more than ten acres each.

"(B) To any nonprofit corporation or nonprofit association, six hundred and forty acres.

"(C) No more than twenty-five thousand six hundred acres may be conveyed for recreational purposes under this Act in any one State per calendar year. Should any State or political subdivision, however, fail to secure, in any one year, six thousand four hundred acres, not counting lands for small roadside parks and rest sites, conveyances may be made thereafter if pursuant to an application on file with the Secretary of the Interior on or before the last day of said year and to the extent that the conveyance would not have exceeded the limitations of said year.".

(c) Section 2(a) of that Act (43 U.S.C. 869–1) is amended by inserting "or recreational purposes" immediately after "historic-monument purposes".

(d) Section 2(b) of that Act (43 U.S.C. 869–1) is amended by adding ", except that leases of such lands for recreational purposes shall be made without monetary consideration" after the phase "reasonable annual rental".

NATIONAL FOREST TOWNSITES

SEC. 213. The Act of July 31, 1958 (72 Stat. 438,

7 U.S.C. 1012a, 16 U.S.C. 478a), is amended to read as follows: "When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: *Provided, however,* That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands."

UNINTENTIONAL TRESPASS ACT

SEC. 214. (a) Notwithstanding the provisions of the Act of September 26, 1968 (82 Stat. 870; 43 U.S.C. 1431–1435), hereinafter called the "1968 Act", with respect to applications under the 1968 Act which were pending before the Secretary as of the effective date of this subsection and which he approves for sale under the criteria prescribed by the 1968 Act, he shall give the right of first refusal to those having a preference right under section 2 of the 1968 Act. The Secretary shall offer such lands to such preference right holders at their fair market value (exclusive of any values added to the land by such holders and their predecessors in interest) as determined by the Secretary as of September 26, 1973.

(b) Within three years after the date of approval of this Act, the Secretary shall notify the filers of applications subject to paragraph (a) of this section whether he will offer them the lands applied for and at what price; that is, their fair market value as of September 26, 1973, excluding any value added to the lands by the applicants or their predecessors in interest. He will also notify the President of the Senate and the Speaker of the House of Representatives of the lands which he has determined not to sell pursuant to paragraph (a) of this section and the reasons therefor. With respect to such lands which the Secretary determined not to sell, he shall take no other action to convey those lands or interests in them before the end of ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the date the Secretary has submitted such notice to the Senate and House of Representatives. If, during that ninety-day period, the Congress adopts a concurrent resolution, he shall continue such suspension for the specified time period. If the committee to which a resolution has been referred during the said ninety-day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the suspension of action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same suspension of action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c) Within five years after the date of approval of this Act, the Secretary shall complete the processing of all applications filed under the 1968 Act and hold sales covering all lands which he has determined to sell thereunder.

TITLE III—ADMINISTRATION

BLM DIRECTORATE AND FUNCTIONS

SEC. 301. (a) The Bureau of Land Management established by Reorganization Plan Numbered 3, of 1946 (5 U.S.C. App. 519) shall have as its head a Director. Appointments to the position of Director shall hereafter be made by the President, by and with the advice and consent of the Senate, The Director of the Bureau shall have a broad background and substantial experience in public land and natural resource management. He shall carry out such functions and shall perform such duties as the Secretary may prescribe with respect to the management of lands and resources under his jurisdiction according to the applicable provisions of this Act and any other applicable law.

(b) Subject to the discretion granted to him by Reorganization Plan Numbered 3 of 1950 (43 U.S.C. 1451 note), the Secretary shall carry out through the Bureau all functions, powers, and duties vested in him and relating to the administration of laws

which, on the date of enactment of this section, were carried out by him through the Bureau of Land Management established by section 403 of Reorganization Plan Numbered 3 of 1946. The Bureau shall administer such laws according to the provisions thereof existing as of the date of approval of this Act as modified by the provisions of this Act or by subsequent law.

(c) In addition to the Director, there shall be an Associate Director of the Bureau and so many Assistant Directors, and other employees, as may be necessary, who shall be appointed by the Secretary subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter 3 of chapter 3 of such title relating to classification and General Schedule pay rates.

(d) Nothing in this section shall affect any regulation of the Secretary with respect to the administration of laws administered by him through the Bureau on the date of approval of this section.

MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT

SEC. 302. (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided*, That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

ENFORCEMENT AUTHORITY

SEC. 303. (a) The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was ap-

pointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.

(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is commiting such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.

(2) The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.

(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 601 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.

(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.

(g) The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND EXCESS PAYMENTS

SEC. 304. (a) Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. As used in this section "reasonable costs" include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs.

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

DEPOSITS AND FORFEITURES

SEC. 305. (a) Any moneys received by the United States as a result of the forfeiture of a bond or

other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary; or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to the public lands shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on those public lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a–1181j), shall be expended for the benefit of such land only.

(c) If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the Secretary, upon application or otherwise, may cause a refund of the amount in excess to be made from applicable funds.

WORKING CAPITAL FUND

SEC. 306. (a) There is hereby established a working capital fund for the management of the public lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, as amended), and regulations promulgated thereunder, supplies and equipment services in support of Bureau programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Secretary for the Bureau.

(b) The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) The fund shall be credited with payments from appropriations, and funds of the Bureau, other agencies of the Department of the Interior, other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated a sum not to exceed $3,000,000 as initial capital of the working capital fund.

STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS

SEC. 307. (a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the public lands.

(b) Subject to the provisions of applicable law, the Secretary may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the public lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

CONTRACTS FOR SURVEYS AND RESOURCE PROTECTION

SEC. 308. (a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor, for airborne cadastral survey and resource protection operations of the Bureau. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

ADVISORY COUNCILS AND PUBLIC PARTICIPATION

SEC. 309. (a) The Secretary is authorized to establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of

such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1).

(b) Notwithstanding the provisions of subsection (a) of this section, each advisory council established by the Secretary under this section shall meet at least once a year with such meetings being called by the Secretary.

(c) Members of advisory councils shall serve without pay, except travel and per diem will be paid each member for meetings called by the Secretary.

(d) An advisory council may furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established and such other matters as may be referred to it by the Secretary.

(e) In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

RULES AND REGULATIONS

SEC. 310. The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of title 5 of the United States Code, without regard to section 553(a)(2). Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical.

PUBLIC LANDS PROGRAM REPORT

SEC. 311. (a) For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House and Senate and shall be provided to the committees prior to the end of the second quarter of each fiscal year.

(c) The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years.

SEARCH AND RESCUE

SEC. 312. Where in his judgment sufficient search, rescue, and protection forces are not otherwise available, the Secretary is authorized in cases of emergency to incur such expenses as may be necessary (a) in searching for and rescuing, or in cooperating in the search for and rescue of, persons lost on the public lands, (b) in protecting or rescuing, or in cooperating in the protection and rescue of, persons or animals endangered by an act of God, and (c) in transporting deceased persons or persons seriously ill or injured in the nearest place where interested parties or local authorities are located.

SUNSHINE IN GOVERNMENT

SEC. 313. (a) Each officer or employee of the Secretary and the Bureau who—

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit, lease, or right-of-way under, or (B) applies for or acquires any land or interests therein under, or (C) is otherwise subject to the provisions of this Act,

shall, beginning on February 1, 1977, annually file with the Secretary a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary shall—

(1) act within ninety days after the date of enactment of this Act—

(A) to define the term "known financial interests" for the purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

RECORDATION OF MINING CLAIMS AND ABANDONMENT

SEC. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28–1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after the date of approval of this Act shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law.

RECORDABLE DISCLAIMERS OF INTEREST IN LAND

SEC. 315. (a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document or disclaimer shall be issued pursuant to this section unless the applicant therefor has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefor has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be deposited to the then-current appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as a quit-claim deed from the United States.

CORRECTION OF CONVEYANCE DOCUMENTS

SEC. 316. The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

MINERAL REVENUES

SEC. 317. (a) Section 35 of the Act of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. 181, 191), as amended, is further amended to read as follows: "All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31, and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State

may direct giving priority to those subdivisions of the State social or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts,' as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.".

(b) Funds now held pursuant to said section 35 by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C–A; C–B; U–A and U–B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.

(c) (1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended. Such loans shall be confined to the uses specified for the 50 per centum of mineral revenues to be received by such States and subdivisions pursuant to section 35 of such Act. All loans shall bear interest at a rate not to exceed 3 per centum and shall be for such amounts and durations as the Secretary shall determine. The Secretary shall limit the amounts of such loans to all States except Alaska to the anticipated mineral revenues to be received by the recipients of said loans and to Alaska to 55 per centum of anticipated mineral revenues to be received by it pursuant to said section 35 for any prospective 10-year period. Such loans shall be repaid by the loan recipients from mineral revenues to be derived from said section 35 by such recipients, as the Secretary determines.

(2) The Secretary, after consultation with Governors of the affected States, shall allocate such loans among the States and their subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(3) Loans under this subsection shall be subject to such terms and conditions as the Secretary determines necessary to assure that the purpose of this subsection will be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

APPROPRIATION AUTHORIZATION

SEC. 318. (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act, but no amounts shall be appropriated to carry out after October 1, 1978, any program, function, or activity of the Bureau under this or any other Act unless such sums are specifically authorized to be appropriated as of the date of approval of this Act or are authorized to be appropriated in accordance with the provisions of subsection (b) of this section.

(b) Consistent with section 607 of the Congressional Budget Act of 1974, beginning May 15, 1977, and not later than May 15 of each second even numbered year thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a request for the authorization of appropriations for all programs, functions, and activities of the Bureau to be carried out during the four-fiscal-year period beginning on October 1 of the calendar year following the calendar year in which such request is submitted. The Secretary shall include in his request, in addition to the information contained in his budget request and justification statement to the Office of Management and Budget, the funding levels which he determines can be efficiently and effectively utilized in the execution of his responsibilities for each such program, function, or activity, notwithstanding any budget guidelines or limitations imposed by any official or agency of the executive branch.

(c) Nothing in this section shall apply to the distribution of receipts of the Bureau from the disposal of lands, natural resources, and interests in lands in accordance with applicable law, nor to the use of contributed funds, private deposits for public survey work, and townsite trusteeships, nor to fund allocations from other Federal agencies, reimbursements from both Federal and non-Federal sources, and funds expended for emergency firefighting and rehabilitation.

(d) In exercising the authority to acquire by purchase granted by subsection (a) of section 205 of this Act, the Secretary may use the Land and Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes.

TITLE IV—RANGE MANAGEMENT

GRAZING FEES

SEC. 401. (a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United

States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after the date of approval of this Act, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after the date of approval of htis Act, the grazing fee charge then in effect shall not be altered and shall remain the same until such report has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

(b)(1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the eleven contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appreciated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42 of the United States Code.

(2) The first clause of section 10(b) of the Taylor Grazing Act (48 Stat. 1269), as amended by the Act of August 6, 1947 (43 U.S.C. 315i), is hereby repealed. All distributions of moneys made under section 401(b)(1) of this Act shall be in addition to distributions made under section 10 of the Taylor Grazing Act and shall not apply to distribution of moneys made under section 11 of that Act. The remaining moneys received by the United States as fees for grazing domestic livestock on the public lands shall be deposited in the Treasury as miscellaneous receipts.

(3) Section 3 of the Taylor Grazing Act, as amended (43 U.S.C. 315), is further amended by—

(a) Deleting the last clause of the first sentence thereof, which begins with "and in fixing," deleting the comma after "time", and adding to that first sentence the words "in accordance with governing law".

(b) Deleting the second sentence thereof.

GRAZING LEASES AND PERMITS

SEC. 402. (a) Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a–1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the eleven contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropirate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided,* That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years.

(c) So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 202 of this Act or section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477; 16 U.S.C. 1601), (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease

specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

(d) All permits and leases for domestic livestock grazing issued pursuant to this section, with the exceptions authorized in subsection (e) of this section, on and after October 1, 1988, may incorporate an allotment management plan developed by the Secretary concerned in consultation with the lessees or permittees involved. Prior to that date, allotment management plans shall be incorporated in grazing permits and leases when they are completed. The Secretary concerned may revise such plans from time to time after such consultation.

(e) Prior to October 1, 1988, or thereafter, in all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this section without two years' prior notification.

(h) Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases.

GRAZING ADVISORY BOARDS

SEC. 403. (a) For each Bureau district office and National Forest headquarters office in the eleven contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

(b) The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) The number of advisers on each board and the number of years an adviser may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Each grazing advisory board shall meet at least once annually.

(e) Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1) shall apply to grazing advisory boards.

(f) The provisions of this section shall expire December 31, 1985.

MANAGEMENT OF CERTAIN HORSES AND BURROS

SEC. 404. Sections 9 and 10 of the Act of December 15, 1971 (85 Stat. 649, 651; 16 U.S.C. 1331, 1339–1340) are renumbered as sections 10 and 11, respectively, and the following new section is inserted after section 8:

"SEC. 9. In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.".

TITLE V—RIGHTS-OF-WAY

AUTHORIZATION TO GRANT RIGHTS-OF-WAY

SEC. 501. (a) The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791);

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-of-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

COST-SHARE ROAD AUTHORIZATION

SEC. 502. (a) The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided,* That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands are not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further,* That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(b) Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

(c) The Secretary may require the user or users of a road, trail, land, or other facility administered

by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates; *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

(d) Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

RIGHT-OF-WAY CORRIDORS

SEC. 503. In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

GENERAL PROVISIONS

SEC. 504. (a) The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) Rights-of-way shall be granted, issued, or renewed pursuant to this title under such regulations or stipulations, consistent with the provisions of this title or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) The Secretary concerned prior to granting or issuing a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulation or with regulations issued by that Secretary, including the terms and conditions required under section 505 of this Act.

(e) The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 505 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this title.

(f) Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(g) The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: *Provided*, That

when the annual rental is less than $100, the Secretary concerned may require advance payment for more than one year at a time: *Provided further*, That the Secretary concerned may waive rentals where a right-of-way is granted, issued, or renewed in reciprocation for a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder. The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incured in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however*, That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interests. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended.

(h)(1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this title shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) The Secretary concerned shall grant, issue, or renew a right-of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accordance with the requirements of this title.

TERMS AND CONDITIONS

SEC. 505. Each right-of-way shall contain—

(a) terms and conditions which will (i) carry habitat and otherwise protect the environment; out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

SUSPENSION OR TERMINATION OF RIGHT-OF-WAY

SEC. 506. Abandonment of a right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and, with respect to easements, an appropriate administrative proceeding pursuant to section 554 of title 5 of the United States Code, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate

such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way.

RIGHTS-OF-WAY FOR FEDERAL AGENCIES

SEC. 507. (a) The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

CONVEYANCE OF LANDS

SEC. 508. If under applicable law the Secretary concerned decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

EXISTING RIGHTS-OF-WAY

SEC. 509. (a) Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title.

(b) When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realinement of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this title, provide in the new right-of-way the same terms and conditions as applied to the portion of the existing right-of-way relinquished to the United States with respect to the payment of annual rental, duration of the right-of-way, and the nature of the interest in lands granted. The Secretary concerned or his delegate shall take final action upon all applications for the grant, issue, or renewal of rights-of-way under subsection (b) of this section no later than six months after receipt from the applicant of all information required from the applicant by this title.

EFFECT ON OTHER LAWS

SEC. 510. (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title: *Provided,* That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–538) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further,* That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501(b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c)(1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued under this title from any provision of the antitrust laws of the United States.

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C 12 et seq); the Federal Trade Commission Act (38 Stat 717; 15 U.S.C.

41 et seq.); and section 73 and 74 of the Act of August 27, 1894.

COORDINATION OF APPLICATIONS

SEC. 511. Applicants before Federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-o-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other Federal department or agency.

TITLE VI—DESIGNATED MANAGEMENT AREAS

CALIFORNIA DESERT CONSERVATION AREA

SEC. 601. (a) The Congress finds that—

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plant to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

(b) It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

(c)(1) For the purpose of this section, the term "California desert" means the area generally depicted on a map entitled "California Desert Conservation Area—Proposed" dated April 1974, and described as provided in subsection (c)(2).

(2) As soon as practicable after the date of approval of this Act, the Secretary shall file a revised map and a legal description of the California Desert Conservation Area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and a map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) The Secretary, in accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

(e) During the period beginning on the date of approval of this Act and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and protect the public lands, and their resources now in danger of destruction, in the California Desert Conservation Area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed desert ranger force.

(f) Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and

waters within the California Desert Conservation Area.

(g) (1) The Secretary, within sixty days after the date of approval of this Act, shall establish a California Desert Conservation Area Advisory Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 309 of this Act.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(h) The Secretary of Agriculture and the Secretary of Defense shall manage lands within their respective jurisdictions located in or adjacent to the California Desert Conservation Area, in accordance with the laws relating to such lands and wherever practicable, in a manner consonant with the purpose of this section. The Secretary, the Secretary of Agriculture, and the Secretary of Defense are authorized and directed to consult among themselves and take cooperative actions to carry out the provisions of this subsection, including a program of law enforcement in accordance with applicable authorities to protect the archeological and other values of the California Desert Conservation Area and adjacent lands.

(i) The Secretary shall report to the Congress no later than two years after the date of approval of this Act, and annually thereafter, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary, to remedy such problems.

(j) There are authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 for the purpose of this section, such amount to remain available until expended.

KING RANGE

SEC. 602. Section 9 of the Act of October 21, 1970 (84 Stat. 1067), is amended by adding a new subsection (c), as follows:

"(c) In addition to the lands described in subsection (a) of this section, the land identified as the Punta Gorda Addition and the Southern Additions on the map entitled 'King Range National Conservation Area Boundary Map No. 2, dated July 29, 1975, is included in the survey and investigation area referred to in the first section of this Act.".

BUREAU OF LAND MANAGEMENT WILDERNESS STUDY

SEC. 603. (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of this Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: *Provided,* That prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present in such areas: *Provided further,* That the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of this Act: *Provided,* That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants.

TITLE VII—EFFECT ON EXISTING RIGHTS; REPEAL OF EXISTING LAWS; SEVERABILITY

EFFECT ON EXISTING RIGHTS

SEC. 701. (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

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(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a–1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

(i) The adequacy of reports required by this Act to be submitted to the Congress or its committees shall not be subject to judicial review.

(j) Nothing in this Act shall be construed as affecting the distribution of livestock grazing revenues to local governments under the Granger-Thye Act (64 Stat. 85, 16 U.S.C. 580h), under the Act of May 23, 1908 (35 Stat. 260, as amended; 16 U.S.C. 500), under the Act of March 4, 1913 (37 Stat. 843, as amended; 16 U.S.C. 501), and under the Act of June 20, 1910 (36 Stat. 557).

* * * * *

SEVERABILITY

SEC. 707. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby.

26. Grants for Basic Research

42 U.S.C. 1891–1893

§ 1891. Authorization to make grants.

The head of each agency of the Federal Government, authorized to enter into contracts for basic scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research, is authorized, where it is deemed to be in furtherance of the objectives of the agency, to make grants to such institutions or organizations for the support of such basic scientific research. (Pub. L. 85–934, § 1, Sept. 6, 1958, 72 Stat. 1793.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1893 of this title; title 7 section 1623a.

§ 1892. Same; title to equipment.

Authority to make grants or contracts for the conduct of basic or applied scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research, shall include discretionary authority, where it is deemed to be in furtherance of the objectives of the agency, to vest in such institutions or organizations, without further obligation to the Government, or on such other terms and conditions as the agency deems appropriate, title to equipment purchased with such grant or contract funds. (Pub. L. 85–934, § 2, Sept. 6, 1958, 72 Stat. 1793.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1623a.

§ 1893. Repealed. Pub. L. 93–608, § 1(1), Jan. 2, 1975, 88 Stat. 1967.

27. Hazardous Materials Transportation Act

49 U.S.C. 1801–1812

Sec.

§ 1801. Congressional declaration of policy.

It is declared to be the policy of Congress in this chapter to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce. (Pub. L. 93–633, title I, § 102, Jan. 3, 1975, 88 Stat. 2156.)

§ 1802. Definitions.

As used in this chapter, the term—

(1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(3) "Secretary" means the Secretary of Transportation, or his delegate;

(4) "serious harm" means death, serious illness, or severe personal injury;

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

(6) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and

(7) "United States" means all of the States.

(Pub. L. 93–633, title I, § 103, Jan. 3, 1975, 88 Stat. 2156.)

REFERENCES IN TEXT

"This chapter", referred to in text, read "this title" in the original, meaning title I of Pub. L. 93–633, the Hazardous Materials Transportation Act. For classification of title I of Pub. L. 93–633 in the Code, see Short Title note under section 1801 of this title.

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC. TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED.

Section effective Jan. 3, 1975, except as otherwise provided, se section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1803. Designation of hazardous materials.

Upon a finding by the Secretary, in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases. (Pub. L. 93–633, title I, § 104, Jan. 3, 1975, 88 Stat. 2156.)

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED.

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1804. Regulations governing transportation of hazardous materials.

(a) General.

The Secretary may issue, in accordance with the provisions of section 553 of Title 5 including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling,

labeling, marking, placarding, and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

(b) Cooperation.

In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

(c) Representation.

No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act, unless it meets the requirements of all applicable regulations issued under this Act. (Pub. L. 93–633, title I, § 105, Jan. 3, 1975, 88 Stat. 2157.)

REFERENCES IN TEXT

"This Act", referred to in text, means Pub. L. 93–633, the Transportation Safety Act of 1974. For classification of Pub. L. 93–633 to this Code, see Short Title note under section 1801 of this title.

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED.

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1472, 1806, 1807 of this title.

§ 1805. Handling of hazardous materials.

(a) Criteria.

The Secretary is authorized to establish criteria for handling hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(b) Registration.

Each person who transports or causes to be transported or shipped in commerce hazardous materials or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials (designated by the Secretary) may be required by the Secretary to prepare and submit to the Secretary a registration statement not more often than once every 2 years. Such a registration statement shall include, but need not be limited to, such person's name; principal place of business; the location of each activity handling such hazardous materials; a complete list of all such hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (a) of this section. The Secretary shall by regulation prescribe the form of any such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person, without charge, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of Title 5, or which is otherwise protected by law from disclosure to the public.

(c) Requirement.

No person required to file a registration statement under subsection (b) of this section may transport or cause to be transported or shipped hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of hazardous materials, unless he has on file a registration statement. (Pub. L. 93–633, title I, § 106, Jan. 3, 1975, 88 Stat. 2157; amended Oct. 11, 1976, Pub. L. 94–474, § 2, 90 Stat. 2068.)

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1806. Exemptions.

(a) General.

The Secretary, in accordane with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this chapter, an exemption from the provisions of this chapter, and from regulations issued under section 1804 of this title, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this chapter in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register. The Secretary shall afford access to any such safety analysis and an opportunity for public

comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of Title 5, or which is otherwise protected by law from disclosure to the public.

(b) Vessels.

The Secretary shall exclude, in whole or in part, from any applicable provisions and regulations under this chapter, any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section, or any other vessel regulated under such Act, to the extent of such regulation.

(c) Firearms and ammunition.

Nothing in this chapter, or in any regulation issued under this chapter, shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of Title 18) or any ammunition therefor, or to prohibit any transportation of firearms or ammunition in commerce.

(d) Limitation on authority.

Except when the Secretary determines that an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this chapter may be exempted from or relieved of the obligation to meet any requirements imposed under this chapter. (Pub. L. 93–633, title I, § 107, Jan. 3, 1975, 88 Stat. 2158.)

REFERENCES IN TEXT

"This chapter", referred to in text, read "this title" in the original, meaning title I of Pub. L. 93–633, the Hazardous Materials Transportation Act. For classification of title I of Pub. L. 93–633 in the Code, see Short Title note under section 1801 of this title.

Section 201 of Ports and Waterways Safety Act of 1972, par. (2) of such section, and such Act, referred to in subsec. (b), are references to Pub. L. 93–340, the Ports and Waterways Safety Act of 1972. Such Act enacted chapter 25 (section 1221 et seq.) of Title 33, Navigation and Navigable Waters, and amended section 391a of Title 46, Shipping. Section 201 of the Act is classified to section 391a of Title 46. Par. (2) of such section 201 is classified to par. (2) of section 391a of Title 46.

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1807. Transportation of radioactive materials in passenger-carrying aircraft.

(a) General.

Within 120 days after January 3, 1975, the Secretary shall issue regulations, in accordance with this section and pursuant to section 1804 of this title, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 1301(4) of this title. Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) Definition.

As used in this section, "radioactive materials" means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation distributed in an essentially uniform manner. (Pub. L. 93–633, title I, § 108, Jan. 3, 1975, 88 Stat. 2159.)

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1808. Powers and duties of Secretary.

(a) General.

The Secretary is authorized to the extent necessary to carry out his responsibilities under this chapter, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions, and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this chapter or regulations issued under this chapter; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) Records.

Each person subject to requirements under this chapter shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) Inspection.

The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(d) Facilities and duties.

The Secretary shall—

(1) establish and maintain facilities and technical staff sufficient to provide, within the Federal government, the capability of evaluating risks connected with the transportation of hazardous materials and materials alleged to be hazardous;

(2) establish and maintain a central reporting system and data center so as to be able to provide the law-enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and

(3) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to recommend appropriate steps to assure the safe transportation of hazardous materials.

(e) Annual report.

The Secretary shall prepare and submit to the President for transmittal to the Congress on or before May 1 of each year a comprehensive report on the transportation and hazardous materials during the preceding calendar year. Such report shall include, but need not be limited to—

(1) a thorough statistical compilation of any accidents and casualties involving the transportation of hazardous materials;

(2) a list and summary of applicable Federal regulations, criteria, orders, and exemptions in effect;

(3) a summary of the basis for any exemptions granted or maintained;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with applicable regulations;

(5) a summary of outstanding problems confronting the administration of this chapter, in order of priority; and

(6) such recommendations for additional legislation as are deemed necessary or appropriate.

(Pub. L. 93–633, title I, § 109, Jan. 3, 1975, 88 Stat. 2159.)

REFERENCES IN TEXT

"This chapter", referred to in subsecs. (a), (b), and (e)(5), read "this title" in the original, meaning title I of Pub. L. 93–633, the Hazardous Materials Transportation Act. For classification of title I of Pub. L. 93–633 in the Code, see Short Title note under section 1801 of this title.

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1809. Penalties.

(a) Civil.

(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this chapter, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than $10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) Criminal.

A person is guilty of an offense if he willfully violates a provision of this chapter or a regulation issued under this chapter. Upon conviction, such person shall be subject, for each offense, to a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both. (Pub. L. 93–633, title I, § 110, Jan. 3, 1975, 88 Stat. 2160.)

REFERENCES IN TEXT

"This chapter", referred to in subsecs. (a)(1) and (b), read "this title" in the original, meaning title I of Pub. L. 93–633, the Hazardous Materials Transportation Act. For classification of title I of Pub. L. 93–633 in the Code, see Short Title note under section 1801 of this title.

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1810. Specific relief.

(a) General.

The Attorney General, at the request of the Sec-

retary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this chapter, or an order or regulation issued under this chapter. Such district courts shall have jurisdiction determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) Imminent hazard.

If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an "imminent hazard" exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm. (Pub. L. 93–633, title I, § 111, Jan. 3, 1975, 88 Stat. 2161.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (a), read "this title" in the original, meaning title I of Pub. L. 93–633, the Hazardous Materials Transportation Act. For classification of title I of Pub. L. 93–633 in the Code, see Short Title note under section 1801 of this title.

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93–633; PENDING PROCEEDINGS UNAFFECTED

Section effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93–633, set out as a note under section 1801 of this title.

§ 1811. Relationship to other laws.

(a) General.

Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is preempted.

(b) State laws.

Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) Other federal laws.

The provisions of this chapter shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (section 1671 et seq. of this title) or to pipelines which are subject to regulation under chapter 39 of Title 18. (Pub. L. 93–633, title I, § 112, Jan. 3, 1975, 88 Stat. 2161.)

REFERENCES IN TEXT

"This chapter", referred to in text, read "this title" in the original, meaning title I of Pub. L. 93–633, the Hazardous Materials Transportation Act. For classification of title I of Pub. L. 93–633 in the Code, see Short Title note under section 1801 of this title.

§ 1812. Authorization of appropriations.

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $7,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,750,000 for the transition period of July 1, 1976, through September 30, 1976, and not to exceed $5,000,000 per fiscal year for the fiscal years ending September 30, 1977, and September 30, 1978. (Pub. L. 93–633, title I, § 115, Jan. 3, 1975, 88 Stat. 2164, amnded Pub. L. 94–56, § 4, July 19, 1975, 89 Stat. 264; Oct. 11, 1976, Pub. L. 94–474, § 3, 90 Stat. 2068.)

28. Hazardous Substances

15 U.S.C. 1261–1274

Sec.

§ 1261. Definitions.

For the purposes of this chapter—

* * * * *

(c) The term "Department" means the Department of Health, Education, and Welfare.

(d) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(e) The term "person" includes an individual, partnership, corporation, and association.

(f) The term "hazardous substance" means:

(1)(A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substances or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Secretary by regulation finds, pursuant to the provisions of section 1262(a) of this title, meet the requirements of subparagraph (1)(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Secretary determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health.

(D) Any toy or other article intended for use by children which the Secretary by regulation determines, in accordance with section 1262(e) of this title, presents an electrical, mechanical, or thermal hazard.

(2) The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, nor to tobacco and tobacco products, but such term shall apply to any article which it not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of paragraph (1) of this subsection by reason of bearing or containing such a pesticide.

(3) The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(h)(1) The term "highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hunderd and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably forseeable manner; or (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Secretary finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) of this section which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Secretary. Before designating any substance as a strong sensitizer, the Secretary, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

* * * * *

(m) The term "radioactive substance" means a substance which emits ionizing radiation.

(n) the term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this chapter that any word, statement, or other information

appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(o) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance, except as otherwise provided by or pursuant to section 1262 of this title, fails to bear a label—

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Secretary by regulation permits or requires the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremly flammable, corrosive, or highly toxic; (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the Secretary pursuant to section 1262 of this title; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h) of this section; (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" or its practical equivalent, or, (ii) if the article is intended for use by children, and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 1471(2)(D) of this title if it is a substance described in paragraph (1) of subsection (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

(q)(1) The term "banned hazardous substance" means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided*, That the Secretary, by regulation, (i) shall exempt from clause (A) of this subsection articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), and provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that he determines that such articles can be adequately labeled to protect the purchasers and users thereof.

(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of paragraph (1) of this subsection shall be governed by the provisions of sections 371 (e), (f), and (g) of Title 21: *Provided*, That if the Secretary finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, he may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a "banned hazardous substance" pending the completion of proceedings relating to the issuance of such regulations.

* * * * *

(s) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article, (2) from propulsion of the article (or any part or accessory thereof), (3) from points or other protrusions, surfaces, edges, openings, or closures, (4) from mov-

ing parts, (5) from lack of insufficiency of controls to reduce or stop motion, (6) as a result of self-adhering characteristics of the article, (7) because the article (or any part or accessory thereof) may be aspirated or ingested, (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

* * * * *

(Pub. L. 86–613, § 2, July 12, 1960, 74 Stat. 372; Pub. L. 89–756, §§ 2(a)—(c), 3(a), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91–113, §§ 2(a), (c), (d), 3, Nov. 6, 1969, 83 Stat. 187–189; Pub. L. 91–601, § 7(a), Dec. 30, 1970, 84 Stat. 1673.)

(As amended Pub. L. 92–516, § 3(1), Oct. 21, 1972, 86 Stat. 998; Pub. L. 94–284, § 3(c), May 11, 1976, 90 Stat. 503.)

AMENDMENTS

1976—Subsec. (f)(2). Pub. L. 94–284 added the words "nor to tobacco and tobacco products".

1972—Subsec. (f)(2). Pub. L. 92–516 substituted "pesticides" for "economic poisons" and "a pesticide" for "an economic poison" wherever appearing therein.

1970—Subsec. (p). Pub. L. 91–601 substituted in text preceding par. (1) "if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance" for "which substance" and added following and below par. (2) provision including in "misbranded hazardous substance" a household substance as defined in section 1471(2)(D) of this title if it is a substance described in par. (1) of subsec. (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

1969—Subsec. (f)(1)(A). Pub. L. 91–113, § 3(a), added "or combustible" following "is flammable".

Subsec. (f)(1)(D). Pub. L. 91–113, § 2(a), added subsec (f)(1)(D).

Subsec. (*l*). Pub. L. 91–113, § 3(b), added the definition of the term "combustible" and expanded references to "flammability" and "flammable" to include "combustibility" and "combustible", respectively.

Subsec. (p)(1)(E). Pub. L. 91–113, § 3(c), added "Combustible" to the enumerated affirmative statements of the principal hazard or hazards required to be stated on the label of a hazardous substance

Subsec. (q)(1). Pub. L. 91–113, § 2(c), added "or necessarily present an electrical, mechanical, or thermal hazard" following "hazardous substance involved".

Subsecs. (r)–(t). Pub. L. 91–113, § 2(d), added subsecs. (r)–(t)

1966—Subsec. (f). Pub. L. 89–756, § 2(a), provided that "hazardous substances" shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazard substance within the meaning of par. (1) of this subsec. by reason of its bearing or containing an economic poison.

Subsec. (n). Pub. L. 89–756, § 2(b), enlarged the term "label" to include, where the article is unpackaged or is packaged in an immediate container not intended or suitable for delivery to the ultimate consumer, a display of written, printed or graphic matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

Subsec. (p). Pub. L. 89–756, § 2(c), in the introductory material preceding par. (1) substituted "misbranded hazardous substance" for "misbranded package" and "misbranded package of a hazardous substance" and as so retermed enlarged applicability to include toys and other articles intended for use by children, which are hazardous substances, or which bear or contain hazardous substances when susceptible of access by children, and in par. (1), clause (J) added further category of "misbranded hazardous substance" where the article is intended for use by children and is not a banned hazardous substance and fails to bear a label with adequate directions for the protection of children from the hazard.

Subsec. (q). Pub. L. 89–756, § 3(a), added subsec. (q).

EFFECT UPON FEDERAL AND STATE LAW

Pub. L. 86–613, § 18, formerly § 17, July 12, 1960, 74 Stat. 380, as amended Pub. L. 89–756, § 4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91–113, § 4(a), (b)(1), Nov. 6, 1969, 83 Stat. 190, provided that:

"(a) Nothing in this act [adding this chapter and repealing sections 401—411 of this title] shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191—1200) [sections 1191—1204 of this title], or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder or under sections 204(a)(2) and 204(a)(3) of the Interstate Commerce Act, as amended [section 304(a)(2), (3) of Title 49] (relating to the transportation of dangerous substances and explosives by surface carriers); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 [section 1472 of Title 49] or regulations promulgated under section 601 of the Federal Aviation Act of 1958 [section 1421 of Title 49] (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act [chapter 9 of Title 21]; or of the Public Health Service Act [chapter 6A of Title 42]; or of the Federal Insecticide, Fungicide, and Rodenticide Act [section 135 et seq. of Title 7]; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled 'An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes', approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19 [set out as a note under former sections 401—411 of this title].

"(b) It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the precautionary labeling of any substance or article intended or suitable for household use (except for those substances defined in sections 2(f)(2) and (3) of this Act) [subsec. (f)(2) and (3) of this section] which differs from the requirements or exemptions of this Act [chapter] or the regulations or interpretations promulgated pursuant thereto. Any law, regulation, or ordinance purporting to establish such a labeling requirement shall be null and void."

§ 1262. Regulations declaring hazardous substances; variations and exemptions; judicial review of determinations.

(a)(1) Whenever in the judgment of the Secretary such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the Secretary may by regulation declare to be a hazardous substance, for the purposes of this chapter, any substance or mixture of substances which he finds meets the requirements of subparagraph (1)(A) of section 1261(f) of this title.

(2) Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall in all respects be governed by the provisions of section 371 (e), (f), and (g) of Title 21, except that—

(A) the Secretary's order after public hearing (acting upon objections filed to an order made prior to hearing) shall be subject to the requirements of section 348(f)(2) of Title 21; and

(B) the scope of judicial review of such order shall be in accordance with the fourth sentence of paragraph (2), and with the provisions of paragraph (3) of section 348(g) of Title 21.

(b) If the Secretary finds that the requirements of section 1261(p)(1) of this title are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may by regulation establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(c) If the Secretary finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the Secretary shall promulgate regulations exempting such substance from these requirements to the extent he determines to be consistent with adequate protection of the public health and safety.

(d) The Secretary may exempt from the requirements established by or pursuant to this chapter any hazardous substance or container of a hazardous substance with respect to which he finds that adequate requirements satisfying the purposes of this chapter have been established by or pursuant to any other Act of Congress.

* * * * *

(Pub. L. 86–613, § 3, July 12, 1960, 74 Stat. 375; Pub. L. 89–756, § 2(d), (e), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91–113, § 2(b), Nov. 6, 1969, 83 Stat. 187.)

AMENDMENTS

1969—Subsec. (e). Pub. L. 91–113 added subsec. (e).

1966—Subsec. (b). Pub. L. 89–756, § 2(d), substituted "any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance" for "any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded package of a hazardous substance".

Subsec. (d). Pub. L. 89–756, § 2(e), inserted "hazardous substance or" preceding "container of a hazardous substance".

§ 1263. Prohibited acts.

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a misbranded hazardous substance or banned hazardous substance.

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guarantee or undertaking referred to in section 1264(b)(2) of this title which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by section 1270(b) of this title or to permit access to and copying of any record as authorized by section 1271 of this title.

(f) The introduction or delivery for introduction into interstate commerce, or the receipt in interstate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Federal Food, Drug, and Cosmetic Act.

(g) The manufacture of a misbranded hazardous substance or banned hazardous substance within the District of Columbia or within any territory not organized with a legislative body.

(h) The use by any person to his own advantage, or revealing other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 1270 of this title concerning any method of process which as a trade secret is entitled to protection. (Pub. L. 86–613, § 4, July 12, 1960, 74 Stat. 375; Pub. L. 89–756, §§ 2(f), 3(b), Nov. 3, 1966, 80 Stat. 1304, 1305.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–756, §§ 2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous sustance" for "misbranded package of a hazardous substance".

Subsec. (b). Pub. L. 89–756, §§ 2(f)(2), 3(b), substituted "being a misbranded hazardous substance or banned hazardous substance" for "being in a misbranded package".

Subsec. (c). Pub. L. 89–756, §§ 2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

Subsec. (f). Pub. L. 89–756, § 2(f)(2), substituted "be-

ing a misbranded hazardous substance" for "being in a misbranded package".

Subsec. (g). Pub. L. 89–756, §§ 2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

§ 1264. Penalties; exceptions.

(a) Any person who violates any of the provisions of section 1263 of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one year, or a fine of not more than $3,000, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 1263(c) of this title, if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 1263(a) of this title, if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this chapter; or (3) for having violated subsection (a) or (c) of section 1263 of this title in respect of any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce, this clause shall not apply. (Pub. L. 86–613, § 5, July 12, 1960, 74 Stat. 376; Pub. L. 89–756, §§ 2(g), 3(c), Nov. 3, 1966, 80 Stat. 1304, 1305.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–756 substituted "a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms" for "in misbranded packages within the meaning of that term".

§ 1265. Seizures.

(a) Grounds and jurisdiction.

Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 1263(f) of this title, be introduced into interstate commerce, or which has been manufactured in violation of section 1263(g) of this title, shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

(b) Procedure; multiplicity of pending proceedings.

Such hazardous substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of one such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Disposition of goods after decree of condemnation.

Any hazardous substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this secton, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such hazardous substance shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided*, That, after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such hazardous substance shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or territory in which sold, the court may by order direct that such hazardous substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this

chapter under the supervision of an officer or employee duly designated by the Secretary, and the expense of such supervision shall be paid by the person obtaining release of the hazardous substance under bond.

(d) Costs and fees.

When a decree of condemnation is entered against the hazardous substance, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the hazardous substance.

(e) Removal of case for trial.

In the case of removal for trial of any case as provided by subsection (b) of this section—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(Pub. L. 86–613, § 6, July 12, 1960, 74 Stat. 376; Pub. L. 89–756, §§ 2(h), 3(d), Nov. 3, 1966, 80 Stat. 1304, 1305.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–756 substituted "Any misbranded hazardous substance or banned hazardous substance" for "Any hazardous substance that is in a misbranded package".

§ 1266. Hearing before report of criminal violation.

Before any violation of this chapter is reported by the Secretary to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. (Pub. L. 86–613, § 7, July 12, 1960, 74 Stat. 377.)

§ 1267. Injunctions; criminal contempt; trial by court or jury.

(a) The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure. (Pub. L. 86–613, § 8, July 12, 1960, 74 Stat. 378.)

§ 1268. Proceedings in name of United States; subpenas.

All criminal proceedings and all libel or injunction proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Subpenas for witnesses who are required to attend a court of the United States in any district may run into any other district in any such proceeding. (Pub. L. 86–613, § 9, July 12, 1960, 74 Stat. 378.)

§ 1269. Regulations.

(a) The authority to promulgate regulations for the efficient enforcement of this chapter, except as otherwise provided in this section, is vested in the Secretary.

(b) The Secretary of the Treasury and the Secretary of Health, Education, and Welfare shall jointly prescribe regulations for the efficient enforcement of the provisions of section 1273 of this title, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Secretary of Health, Education, and Welfare shall determine. (Pub. L. 86–613, § 10, July 12, 1960, 74 Stat. 378.)

§ 1270. Examinations and investigations.

(a) Authority to conduct.

The Secretary is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter through officers and employees of the Department or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Secretary as an officer of the Department.

(b) Inspection; notice; samples.

For purposes of enforcement of this chapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(c) Receipt for sample; results of analysis.

If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner,

operator, or agent in charge. (Pub. L. 86–613, § 11, July 12, 1960, 74 Stat. 378.)

§ 1271. Records of interstate shipment.

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided*, That evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers. (Pub. L. 86–613, § 12, July 12, 1960, 74 Stat. 379; Pub. L. 91–452, title II, § 219, Oct. 15, 1970, 84 Stat. 929.)

AMENDMENTS

1970—Pub. L. 91–452 added ", or any evidence which is directly or indirectly derived from such evidence," following "under this section".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1263 of this title.

§ 1272. Publicity; reports; dissemination of information.

(a) The Secretary may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) The Secretary may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Secretary, imminent danger to health. Nothing in this section shall be construed to prohibit the Secretary from collecting, reporting, and illustrating the results of the investigations of the Department. (Pub. L. 86–613, § 13, July 12, 1960, 74 Stat. 379.)

§ 1273. Imports.

(a) Delivery of samples to Secretary of Health, Education, and Welfare; examination; refusal of admission.

The Secretary of the Treasury shall deliver to the Secretary of Health, Education, and Welfare, upon his request, samples of hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health, Education, and Welfare and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 1263(f) of this title, then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) Disposition of refused articles.

Pending decision as to the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of such hazardous substance to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Secretary of Health, Education, and Welfare that the hazardous substance can, by relabeling or other action, be brought into compliance with this chapter, final determination as to admission of such hazardous substance may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected hazardous substances or portions thereof, as may be specified in the Secretary's authorization). All such relabeling or other action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the Department of Health, Education, and Welfare designated by the Secretary, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) Expenses in connection with refused articles.

All expenses (including travel, per diem, or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any hazardous substance refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee. (Pub. L. 86–613, § 14, July 12, 1960, 74 Stat. 379; Pub. L. 89–756, §§ 2(i), 3(e), Nov. 3, 1966, 80 Stat. 1304, 1305.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–756 substituted "a misbranded hazardous substance or banned hazardous substance" for "in misbranded packages".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1269 of this title.

§ 1274. Repurchase of banned hazardous substances; procedure; definitions.

(a) In the case of any article or substance sold by its manufacturer, distributor, or dealer which is a banned hazardous substance (whether or not it was such at the time of its sale), such article or substance shall, in accordance with regulations of the Secretary, be repurchased as follows:

(1) The manufacturer of any such article or substance shall repurchase it from the person to whom he sold it, and shall—

(A) refund that person the purchase price paid for such article or substance,

(B) if that person has repurchased such article or substance pursuant to paragraph (2) or (3), reimburse him for any amounts paid in accordance with that paragraph for the return of such article or substance in connection with its repurchase, and

(C) if the manufacturer requires the return of such article or substance in connection with his repurchase of it in accordance with this paragraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(2) The distributor of any such article or substance shall repurchase it from the person to whom he sold it, and shall—

(A) refund that person the purchase price paid for such article or substance,

(B) if that person has repurchased such article or substance pursuant to paragraph (3), reimburse him for any amounts paid in accordance with that paragraph for the return of such article or substance in connection with its repurchase, and

(C) if the distributor requires the return of such article or substance in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(3) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund the purchaser the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

(b) For the purposes of this section, (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance. (Pub. L. 86–613, § 15, as added Pub. L. 91–113, § 4(a), Nov. 6, 1969, 83 Stat. 189.)

EFFECTIVE DATE

Section effective on the sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91–113, set out as a note under section 1261 of this title.

29. Highway Beautification

23 U.S.C. 131, 136, 319

§ 131. Control of outdoor advertising.

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States

and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained.

The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained.

Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(*l*) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has

been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $20,000,000 for the fiscal year ending June 30, 1970, not to exceed $27,000,000 for the fiscal year ending June 30, 1971, not to exceed $20,500,000 for the fiscal year ending June 30, 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q)(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 904; Pub. L. 86–342, title I, § 106, Sept. 21, 1959, 73 Stat. 612; Pub. L. 87–61, title I, § 106, June 29, 1961, 75 Stat. 123; Pub. L. 88–157, § 5, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89–285, title I, § 101, Oct. 22, 1965, 79 Stat. 1028; Pub. L. 89–574, § 8(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90–495, § 6(a)—(d), Aug. 23, 1968, 82 Stat. 817; Pub. L. 91–605, title I, § 122(a), Dec. 31, 1970, 84 Stat. 1726; Pub. L. 94–280, title I, § 122, May 5, 1976, 90 Stat. 438.)

AMENDMENTS

1976—Subsec. (f). Pub. L. 94–280, § 122 (a) added the second sentence.

Subsec. (i). Pub. L. 94–280, § 122(c), revised subsec. (i).

Subsec. (a), (p), and (q). Pub. L. 94–280 added subsec. (a), (p), and (q).

1970—Subsec. (m). Pub. L. 91–605 authorized to be appropriated not to exceed $27,000,000, $20,500,000 and $50,000,000, for the fiscal years ending June 30, 1971, 1972, and 1973, respectively.

1968—Subsec. (d). Pub. L. 90–495, § 6(a), provided that whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority.

Subsec. (j). Pub. L. 90–495, § 6(b), struck out provision for the imposition of controls on outdoor advertising by the Federal government that are stricter than those imposed by the State highway department.

Subsec. (m). Pub. L. 90–495, § 6(c), added provision authorizing an appropriation of not to exceed $2,000,000 for the fiscal year ending June 30, 1970.

Subsec. (n). Pub. L. 90–495, § 6(d), added subsec. (n).

1966—Subsec. (m). Pub. L. 89–574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this section after June 30, 1967 the provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this section.

1965—Subsec. (a). Pub. L. 89–285 deleted specific reference to the area which lies within six-hundred and sixty feet of the edge of the right-of-way and which is visible from the right-of-way and instead made only general reference to the areas adjacent to the Interstate System and deleted reference to types of permissible signs.

Subsec. (b). Pub. L. 89–285 substituted provisions reducing by 10 per centum the apportioned share, on or after January 1, 1968, of any state not making provision for effective control of erection and maintenance of outdoor advertising signs, displays and devices within six-hundred and sixty feet of the nearest edge of the right of way and visible from the traveled portion, reapportioning withheld funds to other states, and allowing for suspension of such provisions in the discretion of the Secretary, for provisions which authorized the Secretary to enter into agreements with the states to carry out national policy on control of areas adjacent to the Interstate System.

Subsec. (c). Pub. L. 89–285 substituted provisions setting out permissible types of signs as directional and other official signs and notices, signs advertising sale or lease of property on which the sign is located, and signs, displays, and devices advertising activities conducted on the property on which the sign is located, for provisions allowing for an increase in the federal share payable under the Federal-Aid Highway Act of 1956, as amended, in the case of states entering into an agreement with the Secretary prior to July 1, 1965.

Subsec. (d). Pub. L. 89–285 substituted provisions allowing for agreements between the Secretary and the several states covering commercial or industrial property, for provisions covering control of the adjacent area when the Interstate System is located on or near public lands or reservations of the United States.

Subsec. (e). Pub. L. 89–285 substituted provisions setting out the timetable for removal of signs, displays, and devices lawfully along Interstate System or Federal-aid primary system highways, for provisions allowing the inclusion of the cost of purchase or condemnation of the right to advertise or control advertising in the area adjacent to Interstate System right-of-way as part of the cost of construction.

Subsecs. (f)—(m). Pub. L. 89–285 added subsecs. (f)—(m).

1963—Subsec. (c). Pub. L. 88–157 substituted "July 1, 1965" for "July 1, 1963."

1961—Subsec. (c). Pub. L. 87–61 substituted "July 1, 1963" for "July 1, 1961."

1959—Subsec. (b). Pub. L. 86–342 substituted "Agreements entered into between the Secretary of Commerce and State highway departments under this section shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the presently existing boundaries of incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use, as of the date of approval of this Act, is clearly established by State law as industrial or commercial" for "Upon application of the State, any such agreement may, within the discretion of the Secretary of Commerce consistent with the national policy, provide for excluding from application of the national standards segments of the Interstate System which traverse incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use is clearly established by State law as industrial or commercial."

§ 136. Control of junkyards.

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

(d) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(e) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(f) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

(1) those lawfully in existence on the date of enactment of this subsection.

(2) those lawfully along any highway made a part of the interstate or primary system on or after the enactment of this subsection and before January 1, 1968, and

(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

(*l*) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $3,000,000 for the fiscal year ending June 30, 1970, not to exceed $3,000,000 for the fiscal year ending June 30, 1971, not to exceed $3,000,000 for the fiscal year ending June 30, 1972, and not to exceed $5,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. (Added Pub. L. 89–285, title II, § 201, Oct. 22, 1965, 79 Stat. 1030, and amended Pub. L. 89–574, § 8(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90–495, § 6(c), Aug. 23, 1968, 82 Stat. 818; Pub. L. 91–605, title I, § 122(b), Dec. 31, 1970, 84 Stat. 1726.)

AMENDMENTS

1970—Subsec. (m). Pub. L. 91–605 authorized to be appropriated not to exceed $3,000,000, $3,000,000, and $5,000,000, for the fiscal years ending June 30, 1971, 1972, and 1973, respectively.

1968—Subsec. (m). Pub. L. 90–495 added provision authorizing an appropriation of not to exceed $3,000,000 for the fiscal year ending June 30, 1970.

1966—Subsec. (m). Pub. L. 89–574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this section after June 30, 1967, the provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this section.

§ 319. Landscaping and scenic enhancement.

The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public, and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 916; Pub. L. 89–285, title III, § 301(a), Oct. 22, 1965, 79 Stat. 1032; Pub. L. 89–574, § 8(b), Sept. 13, 1966, 80 Stat. 768; Pub. L. 90–495; § 6(f), Aug. 23, 1968, 82 Stat. 818; Pub. L. 94–280, title I, § 136, May 5, 1976, 90 Stat. 442.)

AMENDMENTS

1976—Pub. L. 94–280 substantially revised this section.

1968—Subsec. (b). Pub. L. 90–495 added provisions authorizing an appropriation of not to exceed $20,000,000 for the fiscal year ending June 30, 1970.

1966—Subsec. (b). Pub. L. 89–574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this subsection after June 30, 1967, the provisions of chapter 1 of this title relating to the obligations, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this subsection.

1965—Pub. L. 89–285 rearranged the section structurally, made provision for apportionment of an amount, in addition to the state's annual apportionment, equivalent to 3 per centum of the fund annually apportioned to the state for federal-aid highways to acquire interests and improvements for restoration, preservation, and enhancement of scenic beauty adjacent to Federal-aid highways, authorized appropriations of $120,000,000 for fiscal year ending June 30, 1966, and $120,000,000 for fiscal year ending June 30, 1967, and prohibited use of Highway Trust Fund moneys in carrying out the scenic enhancement provisions.

CONTINUANCE OF APPROPRIATIONS PREVIOUS TO 1976

AMENDMENTS

Pub. L. 94–280, § 136(b), provided that:

"All sums authorized to be appropriated to carry out section 319(b) of title 23, United States Code, as in effect immediately before the date of enactment of this section shall continue to be available for appropriation, obligation, and expenditure in accordance with such section 319(b), notwithstanding the amendment made by the subsection (a) of this section."

30. Highway Beautification Commission

23 U.S.C. 131 note

"(a) There is hereby established a commission to be known as the Commission on Highway Beautification, hereinafter referred to as the 'Commission'.

"(b) The Commission shall be comprised of eleven members as follows:

"(1) two majority and two minority members of the Senate Committee on Public Works to be appointed by the President of the Senate;

"(2) two majority and two minority members of the House Committee on Public Works to be appointed by the Speaker of the House of Representatives;

"(3) three persons to be appointed by the President of the United States from among persons who are not officers or employees of the United States.

"(c) The Chairman shall be elected from among the

members of the Commission by a majority vote of such members. Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made.

"(d) The organization meeting of the Commission shall be held at such time and place as may be specified in a call issued jointly by the senior member appointed by the President of the Senate and the senior member appointed by the Speaker of the House of Representatives.

"(e) Six members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

"(f) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

"(g) Members of the Commission who are not Members of Congress or officers or employees in the executive branch shall each receive $100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

"(h) The Commission shall (1) study existing statutes and regulations governing the control of outdoor advertising and junkyards in areas adjacent to the Federal-aid highway system; (2) review the policies and practices of the Federal and State agencies charged with administrative jurisdiction over such highways insofar as such policies and practices relate to governing the control of outdoor advertising and junkyards; (3) compile data necessary to understand and determine the requirements for such control which may now exist or are likely to exist within the foreseeable future; (4) study problems relating to the control of on-premise outdoor advertising signs, promotional signs, directional signs, and signs providing information that is essential to the motoring public; (5) study methods of financing and possible sources of Federal funds, including use of the Highway Trust Fund, to carry out a highway beautification program; and (6) recommend such modifications or additions to existing laws, regulations, policies, practices, and demonstration programs as will, in the judgment of the Commission, achieve a workable and effective highway beautification program and best serve the public interest.

"(i) The Commission shall not later than December 31, 1973, submit to the President and the Congress its final report. It shall cease to exist six months after submission of said report. All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the Archives of the United States.

"(j) The Chairman of the Commission shall request the head of each Federal department or independent agency which has an interest in or responsibility with respect to the control of outdoor advertising and of junkyards to appoint, and the head of such department or agency shall appoint, a liaison officer who shall work closely with the Commission and its staff in matters pertaining to this section.

"(k) In carrying out its duties the Commission shall seek the advice of various groups interested in the problems relating to the control of outdoor advertising and junkyards including, but not limited to, State and local governments, public and private organizations working in the fields of environmental protection and conservation, communications media, commercial advertising interests, industry, education, and labor.

"(l) The Commission or, on authorization of the Commission, any committee of two or more members may, for the purpose of carrying out the provisions of this section, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued only on the authority of the Commission and shall be served by anyone designated by the Chairman of the Commission.

"(m) The Commission is authorized to secure from any department, agency, or individual instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this section and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission upon request made by the Chairman.

"(n) There are hereby authorized to be appropriated such sums, but not more than $450,000, as may be necessary to carry out the provisions of this section and such moneys as may be appropriated shall be available to the Commission until expended."

"(o) The Commission is authorized to appoint and fix the compensation of a staff director, and such additional personnel as may be necessary to enable it to carry out its functions. The Director and personnel may be appointed without regard to provisions of title 5, United States Code, covering appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Any Federal employees subject to the civil service laws and regulations who may be employed by the Commission shall retain civil service status without interruption or loss of status or privilege. In no event shall the staff director or any other employee receive as compensation an amount in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. In addition, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed $100 per diem for individuals.

"(p) The Commission is authorized to enter into contracts or agreements for studies and surveys with public and private organizations and, if necessary, to transfer funds to Federal agencies from sums appropriated pursuant to this section to carry out such of its duties as the Commission determines can best be carried out in that manner."

Comprehensive Study on Highway Beautification Programs

Section 302 of Pub. L. 89–285 provided that in order to provide the basis for eavluating the continuing programs authorized by Pub. L. 89–285, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of Pub. L. 89–885, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of Pub. L. 89–285. The Secretary was required to submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than January 10, 1967.

Standards, Criteria, Rules and Regulations; Report to Congress

Section 303 of Pub. L. 89–285 provided that:

"(a) Before the promulgation of standards, criteria,

and rules and regulations, necessary to carry out sections 131 and 136 of title 23 of the United States Code, the Secretary of Commerce shall hold public hearings in each State for the purpose of gathering all relevant information on which to base such standards, criteria, and rules and regulations.

"(b) The Secretary of Commerce shall report to Congress, not later than January 10, 1967, all standards, criteria, and rules and regulations to be applied in carrying out sections 131 and 136 of title 23 of the United States Code."

TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

Section 401 of Pub. L. 89–285 provided that: "Nothing in this Act or the amendments made by this Act [amending this section and section 319 of this title and enacting section 136 of this title and provisions set out as notes under this section and sections 135 and 136 of this title] shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act."

31. Insecticides

7 U.S.C. 135–135k

§ 135. Definitions.

For the purposes of sections 135 to 135k of this title—

(a) The term "economic poison" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(b) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

(c) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(d) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(e) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Administrator shall declare to be a pest.

(f) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(g) The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(h) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(i) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(j) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(k) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(l) The term "weed" means any plant which grows where not wanted.

(m) The term "insect" means any of the numerous small invertebrate animals generally having

the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example spiders, mites, ticks, centipedes, and wood lice.

(n) The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts), as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(o) The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 135d of this title);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(p) The term "active ingredient" means—

(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(q) The term "inert ingredient" means an ingredient which is not active.

(r) The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(s) The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(t) The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

(u) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(v) The term "registrant" means the person registering any economic poison pursuant to the provisions of sections 135 to 135k of this title.

(w) The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

(x) The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the Environmental Protection Agency, the United States Department of the Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons.

(y) The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(z) The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under sections 135 to 135k of this title other than the registration number assigned to the economic poison;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Administrator may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of sections 135 to 135k of this title to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrtae animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided*, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations; or

(i) if its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of Title 15.

(June 25, 1947, ch. 125, § 2, 61 Stat. 163; Aug. 7, 1959, Pub. L. 86–139, § 2, 73 Stat. 286; May 12, 1964, Pub. L. 88–305, § 1, 78 Stat. 190; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —; Dec. 30, 1970, Pub. L. 91–601, § 7(b), 84 Stat. 1673.)

AMENDMENTS

1970—Subsec. (z)(2)(i). Pub. L. 91–601 added par. (2)(i).

1964—Subsec. (z)(2)(b). Pub. L. 88–305 added the words: "other than the registration number assigned to the economic poison."

1959—Subsec. (a). Pub. L. 86–139, § 2(A), designated existing provisions as par. (1), included therein "nematodes" and added par. (2).

Subsec. (b). Pub. L. 86–139, § 2(A), included "nematodes".

Subsec. (g)—(k). Pub. L. 86–139, § 2(B), added subsecs. (g)—(k). Former subsecs. (g)—(k) redesignated (*l*)—(p).

Subsecs. (*l*)—(o). Pub. L. 86–139, § 2(B), redesignated former subsecs. (g)—(j) as (*l*)—(o). Former subsecs. (*l*)—(o) redesignated (q)—(t).

Subsec. (p). Pub. L. 86–139, § 2(B), redesignated former subsec. (k) as (p), designated existing provisions as par. (1), inserted "In the case of an economic poison other than a plant regulator, defoliant or desiccant" and "nematodes" therein, and added pars. (2)—(4). Former subsec. (p) redesignated (u).

Subsecs. (q)—(y). Pub. L. 86–139, § 2(B), redesignated former subsecs. (*l*)—(t) as (q)—(y). Former subsecs. (q)—(u) redesignated (v)—(z).

Subsec. (z). Pub. L. 86–139, § 2(B), redesignated former subsec. (u) as (z), included "nematocide" in par. (2)(g) and added par. (2)(h).

§ 135a. Prohibited acts.

(a) It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

(1) Any economic poison which is not registered pursuant to the provisions of section 135b of this title, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided*, That in the discretion of the Administrator, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trade-mark under which said article is sold;

(c) the net weight or measure of the content: *Provided*, That the Administrator may permit reasonable variations; and

(d) when required by regulation of the Administrator to effectuate the purposes of sections 135 to 135k of this title, the registration number assigned to the article under such sections.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 135d of this title, unless the label shall bear, in addition to any other matter required by sections 135 to 135k of this title—

(a) the skull and crossbones;

(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with sections 135 to 135k of this title, or any other white powder economic poison which the Administrator, after

investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored: *Provided*, That the Administrator may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

(b) Notwithstanding any other provision of sections 135 to 135k of this title, no article shall be deemed in violation of said sections when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

(c) It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in sections 135 to 135k of this title or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of said sections;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Administrator to have access to and to copy such records as authorized by section 135c of this title;

(3) for any person to give a guaranty or undertaking provided for in section 135e of this title which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 135e of this title may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency, or other Federal agencies, or to the courts in response to a subpena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Administrator may prescribe, any information relative to formulas of products acquired by authority of section 135b of this title.

(June 25, 1947, ch. 125, § 3, 61 Stat. 166; May 12, 1964, Pub. L. 88–305, §§ 2, 6, 78 Stat. 190, 193; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

AMENDMENTS

1964—Subsec. (a)(1). Pub. L. 88–305, § 6, substituted "is not registered" for "has not been registered."

Subsec. (a)(2)(d). Pub. L. 88–305, § 2, added par. (2)(d).

§ 135b. Registration of economic poisons.

(a) General requirement; single economic poisons; supplement statements; filing and contents of statements.

Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Administrator: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the applicant for registration shall file with the Administrator a statement including—

(1) the name and address of the applicant for registration and the name and address of the person whose name will appear on the label, if other than the applicant for registration;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

(4) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based.

(b) Submission of formula; registration by Administrator upon compliance with requirements.

The Administrator, whenever he deems it necessary for the effective administration of sections 135 to 135k of this title, may require the submission of the complete formula of the economic poison. If it appears to the Administrator that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 135a of this title, he shall register it.

(c) Notification of noncompliance with requirements; corrections; refusal, suspension or cancellation of registration by Administrator; effective date of cancellation; advisory committees and procedures; objections; public hearings; Administrator's orders; consultation with other agencies; confidential information; public hazard suspension; orders reviewable; defense of registration.

If it does not appear to the Administrator that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of sections 135 to 135k of this title, he shall notify the applicant for registration of the manner in which the article, labeling, or other material required to be submitted fail to comply with said sec-

tions so as to afford the applicant for registration an opportunity to make the corrections necessary. If, upon receipt of such notice, the applicant for registration does not make the corrections, the Administrator shall refuse to register the article. The Administrator, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of sections 135 to 135k of this title. Whenever the Administrator refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Administrator. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Administrator. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Administrator shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Administrator shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the Environmental Protection Agency, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Administrator for an additional sixty days, the committee shall, after independent study of the data submitted by the Administrator and all other pertinent information available to it, submit a report and recommendation to the Administrator as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Administrator shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Administrator, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Administrator shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Administrator by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 1006(c) of Title 5. The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Administrator, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Administrator shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Administrator by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 135a(c)(4) of this title, information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Administrator. All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the Environmental Protection Agency, as provided for herein, and in connection with its report and recommendations to the Administrator. Notwithstanding any other provision of this section, the Administrator may, when he finds that such action is necessary to prevent an imminent

hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Administrator under this section shall be subject to judicial review, in accordance with the provisions of subsection (d) of this section. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 135a of this title.

(d) Judicial review; court of appeals; persons entitled to appeal, petition, record, jurisdiction, conclusiveness of findings, additional evidence, modification of findings and orders; Supreme Court; stay of administrative orders; calendar.

In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Administrator with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Administrator may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 18.[1] The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

(e) Shipments between single-ownership plants.

Notwithstanding any other provision of sections 135 to 135k of this title, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under said sections.

(f) Time of cancellation and continuance of registration.

The Administrator is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Administrator that such registration be continued in effect. (June 25, 1947, ch. 125, § 4, 61 Stat. 167; May 12, 1964, Pub. L. 88–305, §§ 3, 4, 78 Stat. 190–192; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–305, § 3, substituted "applicant for registration" for "registrant" in three instances.

Subsec. (c). Pub. L. 88–305, § 3, substituted in the first sentence relating to notification of noncompliance with requirements "applicant for registration" for "registrant" in two instances and substituted provisions respecting refusal, suspension or cancellation of registration by Secretary, notification of action and statement of reasons, effective data of cancellation, advisory committees and advisory committee procedures, objections and public hearings, Secretary's orders, consultation with Federal agencies or advisory committee, formula information and confidential data, imminent public hazard suspension, and reviewable orders for former provisions for registration under protest.

Subsec. (d). Pub. L. 88–305, § 4, added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 88–305, § 4, redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 88–305, § 4, redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1964 AMENDMENT; TERMINATION OF CERTAIN EXISTING REGISTRATIONS, UNDER PROTEST

Amendment of subsec. (a), (c)—(f) of this section by Pub. L. 88–305 effective on May 12, 1964 and termination thereupon of certain existing registrations under protest, see section 7 of Pub. L. 88–305, set out as a note under section 135 of this title.

EFFECTIVE DATE

Section effective June 25, 1947, see note set out under section 135 of this title.

§ 135c. Books and records; access and inspection; use in criminal prosecution.

For the purposes of enforcing the provisions of sections 135 to 135k of this title, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to said sections, shall, upon request of any employee of the Environmental Protection Agency or any employee of any State, Territory, or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding

[1] So in original. Probably should read "Title 28."

of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained. (June 25, 1947, ch. 125, § 5, 61 Stat. 168; Oct. 15, 1970, Pub. L. 91–452, title II, § 204, 84 Stat. 928; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

§ 135d. Rules and regulations; examination of economic poisons or devices; notification to violators; certification to United States attorney; duty of attorney; publication of judgments.

(a) The Administrator (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of sections 135 to 135k of this title, including the collection and examination of samples of economic poisons and devices subject to said sections and the determination and establishment of suitable names to be used in the ingredient statement. The Administrator is, in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 135a (a) (4) of this title.

(b) The Secretary of the Treasury and the Administrator shall jointly prescribe regulations for the enforcement of section 135h of this title.

(c) The examination of economic poisons or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examination whether they comply with the requirements of sections 135 to 135k of this title, and if it shall appear from any such examination that they fail to comply with the requirements of said sections, the Administrator shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of said sections have been violated by such person, then the Administrator shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided*, That nothing in said sections shall be construed as requiring the Administrator to report for prosecution or for the institution of libel proceedings minor violations of said sections whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(d) It shall be the duty of each United States attorney, to whom the Administrator or his agents shall report any violation of sections 135 to 135k of this title, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

(e) The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of sections 135 to 135k of this title. (June 25, 1947, ch. 125, § 6, 61 Stat. 168; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

§ 135e. Exemptions from penalties.

(a) The penalties provided for a violation of section 135a (a) of this title shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of sections 135 to 135k of this title, designating said sections. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of said sections;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Administrator shall permit such person to copy all records showing the transactions in and movement of the articles;

(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Administrator.

(June 25, 1947, ch. 125, § 7, 61 Stat. 169; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

§ 135f. Penalties.

(a) Any person violating section 135a (a) (1) of this title shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.

(b) Any person violating any provision other than section 135a (a) (1) of this title shall be guilty of a misdemeanor and shall upon conviction be fined not more than $500 for the first offense, and on conviction for each subsequent offense be fined not more

than $1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Provided*, That an offense committed more than five years after the last previous conviction shall be considered a first offense. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Administrator to comply with all the requirements of sections 135 to 135k of this title.

(c) Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 135b of this title, he shall be fined not more than $10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

(d) When construing and enforcing the provisions of sections 135 to 135k of this title, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed. (June 25, 1947, ch. 125, § 8, 61 Stat. 170; May 12, 1964, Pub. L. 88–305, § 5, 78 Stat. 193; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2084.)

§ 135g. Seizures; disposition; costs against claimant.

(a) Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

(a) if it is adulterated or misbranded;

(b) if it is not registered pursuant to the provisions of section 135b of this title;

(c) if it fails to bear on its label the information required by sections 135 to 135k of this title; or

(d) if it is a white powder economic poison and is not colored as required under said sections; or

(2) in the case of a device if it is misbranded.

(b) If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of sections 135 to 135k of this title or of the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of said sections or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(c) When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article. (June 25, 1947, ch. 125, § 9, 61 Stat. 170; May 12, 1964, Pub. L. 88–305, § 6, 78 Stat. 193.)

AMENDMENTS

1964—Subsec. (a)(1)(b). Pub. L. 88–305 substituted "is not registered" for "has not been registered."

§ 135h. Imports; prohibition against delivery; penal bonds; imposition of costs; liens.

The Secretary of the Treasury shall notify the Administrator of the arrival of economic poisons and devices offered for importation and shall deliver to the Administrator, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in sections 135 to 135k of this title, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forefeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee. (June 25, 1947, ch. 125, § 10, 61 Stat. 171; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

§ 135i. Delegation of duties.

All authority vested in the Administrator by virtue of the provisions of sections 135 to 135k of this title may with like force and effect be executed by such

employees of the Environmental Protection Service as the Administrator may designate for the purpose. (June 25, 1947, ch. 125, § 11, 61 Stat. 171; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

§ 135j. Appropriations; expenditures.

(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of sections 135 to 135k of this title.

(b) The Administrator is authorized from the funds appropriated for sections 135 to 135k of this title to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of said sections. (June 25, 1947, ch. 125, § 12, 61 Stat. 172; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

§ 135k. Cooperation between departments and agencies.

The Administrator is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of sections 135 to 135k of this title, and in securing uniformity of regulations. (June 25, 1947, ch. 125, § 13, 61 Stat. 172; 1970 Reorg. Plan No. 3, § 2(a)(8)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

32. Multiple-Use Sustained Yield Act

16 U.S.C. 528–531

§ 528. Development and administration of renewable surface resources for multiple use and sustained yield of products and services; Congressional declaration of policy and purpose.

It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests. (Pub. L 86–517, § 1, June 12, 1960, 74 Stat. 215.)

§ 529. Same; authorization; consideration to relative values of resources; areas of wilderness.

The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528 to 531 of this title. (Pub. L. 86–517, § 2, June 12, 1960, 74 Stat. 215.)

§ 530. Same; cooperation with State and local governmental agencies and others.

In the effectuation of sections 528 to 531 of this title the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the national forests. (Pub. L. 86–517, § 3, June 12, 1960, 74 Stat. 215.)

§ 531. Same; definitions.

As used in sections 528 to 531 of this title the following terms shall have the following meanings:

(a) "Multiple use" means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. (Pub. L. 86–517, § 4, June 12, 1960, 74 Stat. 215.)

33. Marine Sanctuaries

16 U.S.C. 1431–1434

(See Marine Sanctuaries under title XII *Water Resources*)

34. National Commission on Materials Policy

Pub. L. 91–512 §§ 201–206; 42 U.S.C. 3251 note

Sections 210–206 of Pub. L. 91–512 provided that:

"SEC. 201. [Short Title] This title may be cited as the 'National Materials Policy Act of 1970'.

"SEC. 202. [Declaration of purpose] It is the purpose of this title to enhance environmental quality and conserve materials by developing a national materials policy to utilize present resources and technology more efficiently, to anticipate the future materials requirements of the Nation and the world, and to make recommendations on the supply, use, recovery, and disposal of materials.

"SEC. 203. [Establishment; composition; Chairman; compensation] (a) There is hereby created the National Commission on Materials Policy (hereafter referred to as the ('Commission') which shall be composed of seven members chosen from Government service and the private sector for their outstanding qualifications and demonstrated competence with regard to matters related to materials policy, to be appointed by the President with the advice and consent of the Senate, one of whom he shall designate as Chairman.

"(b) The members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

"SEC. 204. [Duties and powers; report; termination] The Commission shall make a full and complete investigation and study for the purpose of developing a national materials policy which shall include, without being limited to, a determination of—

"(1) national and international materials requirements, priorities, and objectives, both current and future, including economic projections;

"(2) the relationship of materials policy to (A) national and international population size and (B) the enhancement of environmental quality;

"(3) recommended means for the extraction, development, and use of materials which are susceptible to recycling, reuse, or self-destruction, in order to enhance environmental quality and conserve materials;

"(4) means of exploiting existing scientific knowledge in the supply, use, recovery, and disposal of materials and encouraging further research and education in this field;

"(5) means to enhance coordination and cooperation among Federal departments and agencies in materials usage so that such usage might best serve the national materials policy;

"(6) the feasibility and desirability of establishing computer inventories of national and international materials requirements, supplies, and alternatives; and

"(7) which Federal agency or agencies shall be assigned continuing responsibility for the implementation of the national materials policy.

"(b) In order to carry out the purposes of this title, the Commission is authorized—

"(1) to request the cooperation and assistance of such other Federal departments and agencies as may be appropriate;

"(2) to appoint and fix the compensation of such staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of such title relating to classification and General Schedule pay rates; and

"(3) to obtain the services of experts and consultants, in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed $100 per diem.

"(c) The Commission shall submit to the President and to the Congress a report with respect to its findings and recommendations no later than June 30, 1973, and shall terminate not later than ninety days after submission of such report.

"(d) Upon request by the Commission, each Federal department and agency is authorized and directed to furnish, to the greatest extent practicable, such information and assistance as the Commission may request.

"SEC. 205. [Definition] When used in this title, the term 'materials' means natural resources intended to be utilized by industry for the production of goods, with the exclusion of food.

"SEC. 206. [Authorization of appropriations] There is hereby authorized to be appropriated the sum of $2,000,000 to carry out the provisions of this title."

35. National Commission on Supplies and Shortages

50 U.S.C. App. 2169

§ 2169. National Commission on Supplies and Shortages.

(a) Short title.

This section may be cited as the "National Commission on Supplies and Shortages Act of 1974".

(b) Congressional findings.

(1) The United States is increasingly dependent on the importation from foreign nations of certain natural resources vital to commerce and the national defense.

(2) Nations that export such resources can alone or in association with other nations arbitrarily raise the prices of such resources to levels which are unreasonable and disruptive of domestic and foreign economies.

(3) Shortages of resources and commodities are becoming increasingly frequent in the United States, and such shortages cause undue inconvenience and expense to consumers and a burden on interstate commerce and the Nation's economy.

(4) Existing institutions do not adequately identify and anticipate such shortages and do not adequately monitor, study, and analyze other market adversities involving specific industries and specific sectors of the economy.

(5) Data with respect to such shortages and adversities is collected in various agencies of the Government for various purposes, but is not systematically coordinated and disseminated to the appropriate agencies and to the Congress.

(c) Statement of purposes.

It is the purpose of this Act to establish a national commission to facilitate more effective and informed responses to resource and commodity shortages and to report to the President and the Congress on needed institutional adjustments for examining and predicting shortages and on the existence or possi-

bility of shortages with respect to essential resources and commodities.

(d) Establishment; number and tenure of members.

There is established as an independent instrumentality of the Federal Government a National Commission on Supplies and Shortages (hereinafter referred to as the "Commission"). The Commission shall be comprised of thirteen members selected for such period of time as such Commission shall continue in existence (except that any individual appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term) as follows:

(1) The President, in consultation with the majority and minority leaders of the Senate and the majority and minority leaders of the House of Representatives, shall appoint five members of the Commission from among persons in private life;

(2) The President shall designate four senior officials of the executive branch to serve without additional compensation, and may appoint additional nonvoting ex officio members from agencies having jurisdiction over areas being considered by the Commission;

(3) The President of the Senate, after consultation with the majority and minority leaders of the Senate, shall appoint two Senators to be members of the Commission and the Speaker of the House of Representatives, after consultation with the majority and minority leaders of the House of Representatives, shall appoint two Representatives to be members of the Commission to serve without additional compensation.

(e) Chairman and Vice Chairman.

The President, in consultation with the majority and minority leaders of the Senate and the House of Representatives shall designate a Chairman and Vice Chairman of the Commission.

(f) Compensation.

Each member of the Commission appointed pursuant to subsection (d)(1) of this section shall be entitled to be compensated at a rate equal to the per diem equivalent of the rate for an individual occupying a position under level III of the Executive Schedule under section 5314 of title 5, United States Code, when engaged in the actual performance of duties as such a member, and all members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

(g) Functions of the Commission.

It shall be the function of the Commission to make reports to the President and to the Congress with respect to—

(1) the existence or possibility of any long- or short-term shortages; employment, price or business practices; or market adversities affecting the supply of any natural resources, raw agriculture commodities, materials, manufactured products (including any possible impairment of productive capacity which may result from shortages in materials, resources, commodities, manufactured products, plant or equipment, or capital investment, and the causes of such shortages, practices, or adversities);

(2) the adverse impact or possible adverse impact of such shortages, practices, or adversities upon consumers, in terms of price and lack of availability of desired goods;

(3) the need for, and the assessment of, alternative actions necessary to increase the availability of the items referred to in paragraph (1) of this subsection, to correct the adversity or practice affecting the availability of any such items, or otherwise to mitigate the adverse impact or possible adverse impact of shortages, practices, or adversities upon consumers referred to in paragraph (2) of this subsection;

(4) existing policies and practices of Government which may tend to affect the supply of natural resources and other commodities;

(5) necessary legislative and administrative actions to develop a comprehensive strategic and economic stockpiling and inventories policies which facilitates the availability of essential resources;

(6) the means by which information with respect to paragraphs (1), (2), (3), (4) of this subsection can be most effectively and economically gathered and coordinated.

(h) Reports and recommendations to President and Congress.

The Commission shall report not later than December 31, 1976, to the President and the Congress on specific recommendations with respect to institutional adjustments, including the advisability of establishing an independent agency to provide for a comprehensive data collection and storage system, to aid in examination and analysis of the supplies and shortages in the economy of the United States and in relation to the rest of the world. The Commission may, until March 31, 1977, prepare, publish and transmit to the President and the Congress such other reports and recommendations as it deems appropriate.

(i) Advisory committees.

(1) The Commission is authorized to establish such advisory committees as may be necessary or appropriate to carry out any specific analytical or investigative undertakings on behalf of the Commission. Any such committee shall be subject to the relevant provisions of the Federal Advisory Committee Act.

(2) The Commission shall establish an advisory committee to develop recommendations as to the establishment of a policy making process and structure within the executive and legislative branches of the Federal Government as a means to integrate the study of supplies and shortages of resources and commodities into the total problem of balanced national growth and development, and a system for coordinating these efforts with appropriate multi-State, regional and State governmental jurisdictions. For the purpose of carrying out the provision of this paragraph there is authorized to be appropriated not to exceed $150,000 to remain available until March 31, 1977.

(j) Staff and powers of the Commission.

(1) Subject to such rules and regulations as it may adopt, the Commission, through its Chairman, shall—

(A) appoint and fix the compensation of an Executive Director at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and such additional staff personnel as is deemed necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and the General Schedule under section 5332 of such title; and

(B) be authorized to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(2) The Commission or any subcommittee thereof is authorized to hold hearings and to sit and act at at such times and places, as it may deem advisable.

(3) The Commission is authorized to contract with public or private agencies, institutions, corporations, and other organizations.

(k) Assistance of Government agencies.

Each department agency, and instrumentality of the Federal Government, including the Congress, consistent with the Constitution of the United States, and independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman, such data, reports, and other information as the Commission deems necessary to carry out its functions under this Act.

(*l*) Authorization of appropriations.

There is authorized to be appropriated to the Commission not to exceed $1,484,000 to remain available until March 31, 1977, to carry out the provisions of this Act. (Sept. 8, 1950, ch. 932, title VII, § 720, as added Sept. 30, 1974, Pub. L. 93–426, § 5, 88 Stat. 1167, and amended Mar. 21, 1975, Pub. L. 94–9, 89 Stat. 15; Aug. 5, 1975, Pub. L. 94–72, 89 Stat. 399; Dec. 16, 1975, Pub. L. 94–152, § 8, 89 Stat. 820.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (c), (k), and (*l*), means Pub. L. 93–426 which enacted this section and amended sections 2094, 2161, and 2166 of this Appendix.

The Federal Advisory Committee Act, referred to in subsec. (i), is Pub. L. 92–463, set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1975—Subsec. (d)(2). Pub. L. 94–72 added provision relating to the appointment of additional nonvoting ex officio members from agencies having jurisdiction over areas being considered by the Commission.

Subsec. (h). Pub. L. 94–153, § 8(1), substituted "December 31, 1976" for "March 31, 1976", and "March 31, 1977" for "October 1, 1976".

Pub. L. 94–72 substituted "March 31, 1976" for "June 30, 1975", and "October 1, 1976" for "December 31, 1975".

Pub. L. 94–9 substituted "June 30, 1975" for "March 1, 1975" and "December 31, 1975" for "June 30, 1975".

Subsec. (i)(2), Pub. L. 94–152, § 8(2), substituted "not to exceed $150,000 to remain available until March 31, 1977" for "not to exceed $75,000 to remain available until October 1, 1976".

Pub. L. 94–72 substituted "October 1, 1976" for "December 31, 1975".

Pub. L. 94–9 substituted "to remain available until December 31, 1975" for "for the fiscal year ending June 30, 1975".

Subsec. (j)(3). Pub. L. 94–152, § 8(4), added subsec. (j)(3).

Subsec. (*l*). Pub. L. 94–152, § 8(3), substituted "not to exceed $1,484,000 to remain available until March 31, 1977" for "not to exceed $500,000 to remain available until October 1, 1976".

Pub. L. 94–72 substituted "October 1, 1976" for "December 31, 1975."

Pub. L. 94–9 substituted "to remain available until December 31, 1975" for "for the fiscal year ending June 30, 1975".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–152 effective on the one hundred and twentieth day beginning after Dec. 16, 1975, see section 9 of Pub. L. 94–152, set out as a note under section 2158 of this Appendix.

36. National Environmental Policy Act

42 U.S.C. 4321–4347

Sec.

§ 4321. Congressional declaration of purpose.

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or elimi-

nate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. (Pub. L. 91–190, § 2, Jan. 1, 1970, 83 Stat. 852.)

SUBCHAPTER I.—POLICIES AND GOALS

§ 4331. Congressional declaration of national environmental policy.

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. (Pub. L. 91–190, title I, § 101, Jan. 1, 1970, 83 Stat. 852.)

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its ap-

proval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(As amended Pub. L. 94–83, Aug. 9, 1975, 89 Stat. 424.)

AMENDMENTS

1975—Subpar. (D). Pub. L. 94–83 added subpar. (D). Former subpar. (D) redesignated (E).

Subpars. (E) to (I). Pub. L. 94–83 redesignated former subpars. (D) to (H) as (E) to (I), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2242, 4334 of this title; title 15 section 793; title 30 section 185; title 33 section 1504, title 45 section 791; title 49 section 1431.

§ 4333. Conformity of administrative procedures to national environmental policy.

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter. (Pub. L. 91–190, title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

[1] So in original. The period probably should be a semicolon.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4334 of this title.

§ 4334. Other statutory obligations of agencies.

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency. (Pub. L. 91–190, title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

§ 4335. Efforts supplemental to existing authorizations.

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies. (Pub. L. 91–190, title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4332 of this title.

§ 4341. Reports to Congress; recommendations for legislation.

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation. (Pub. L. 91–190, title II, § 201, Jan. 1, 1970, 83 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4344 of this title.

§ 4342. Establishment; membership; Chairman; appointments.

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate.

The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. (Pub. L. 91–190, title II, § 202, Jan. 1, 1970, 83 Stat. 854.)

§ 4343. Employment of personnel, experts and consultants.

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of Title 5 (but without regard to the last sentence thereof).

(b) Notwithstanding section 665(b) of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council. (As amended Pub. L. 94–52, § 2, July 3, 1975, 89 Stat. 258.)

AMENDMENTS

1975—Pub. L. 94–52 designated existing provisions as subsec. (a) and added subsec. (b).

§ 4344. Duties and functions.

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub. L. 91–190, title II, § 204, Jan. 1, 1970, 83 Stat. 855.)

§ 4345. Consultation with the Citizen's Advisory Committee on Environmental Quality and other representatives.

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub. L. 91–190, title II, § 205, Jan. 1, 1970, 83 Stat. 855.)

§ 4346. Tenure and compensation of members.

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates. The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates. (Pub. L. 91–190, title II, § 206, Jan. 1, 1970, 83 Stat. 856.)

§ 4346a. Travel reimbursement by private organizations and Federal, State, and local governments.

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council. (Pub. L. 91–190, title II, § 207, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258.)

§ 4346b. Expenditures in support of international activities.

The Council may make expenditures in support

of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries. (Pub. L. 91–190, title II, § 208, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258.)

§ 4347. Authorization of appropriation.

There are authorized to appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter. (Pub. L. 91–190, title II, § 207, Jan. 1, 1970, 83 Stat. 856.)

37. National Park System Mining Activity Regulation

P.L. 94–429 (90 Stat. 1342)

AN ACT

To provide for the regulation of mining activity within, and to repeal the application of mining laws to, areas of the National Park System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares that—

(a) the level of technology of mineral exploration and development has changed radically in recent years and continued application of the mining laws of the United States to those areas of the National Park System to which it applies, conflicts with the purposes for which they were established; and

(b) all mining operations in areas of the National Park System should be conducted so as to prevent or minimize damage to the environment and other resource values, and, in certain areas of the National Park System, surface disturbance from mineral development should be temporarily halted while Congress determines whether or not to acquire any valid mineral rights which may exist in such areas.

SEC. 2. In order to preserve for the benefit of present and future generations the pristine beauty of areas of the National Park System, and to further the purposes of the Act of August 25, 1916, as amended (16 U.S.C. 1) and the individual organic Acts for the various areas of the National Park System, all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System shall be subject to such regulations prescribed by the Secretary of the Interior as he deems necessary or desirable for the preservation and management of those aeas.

SEC. 3. Subject to valid existing rights, the following Acts are amended or repealed as indicated in order to close these areas to entry and location under the Mining Law of 1872:

(a) the first proviso of section 3 of the Act of May 22, 1902 (32 Stat. 203; 16 U.S.C. 123), relating to Crater Lake National Park, is amended by deleting the words "and to the location of mining claims and the working of same";

(b) section 4 of the Act of February 26, 1917 (39 Stat. 938; 16 U.S.C. 350), relating to Mount McKinley National Park, is hereby repealed;

(c) section 2 of the Act of January 26, 1931 (46 Stat. 1043; 16 U.S.C. 350a), relating to Mount McKinley National Park, is hereby repealed;

(d) the Act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447), relating to Death Valley National Monument, is hereby repealed;

(e) the Act of June 22, 1936 (49 Stat. 1817), relating to Glacier Bay National Monument, is hereby repealed;

(f) section 3 of the Act of August 18, 1941 (55 Stat. 631; 16 U.S.C. 450y–2), relating to Coronado National Memorial is amended by replacing the semicolon in subsection (a) with a period and deleting the prefix "(a)", the word "and" immediately preceding subsection (b), and by repealing subsection (b); and

(g) The Act of October 27, 1941 (55 Stat. 745; 16 U.S.C. 450z), relating to Organ Pipe Cactus National Monument, is hereby repealed.

SEC. 4. For a period of four years after the date of enactment of this Act, holders of valid mineral rights located within the boundaries of Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument shall not disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February 29, 1976: *Provided,* That if the Secretary finds that enlargement of the existing excavation of an individual mining opertation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, the surface of lands contiguous to the existing excavation may be disturbed to the minimum extent necessary to effect such enlargement, subject to such regulations as may be issued by the Secretary under section 2 of this Act. For purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

SEC. 5. The requirements for annual expenditures on mining claims imposed by Revised Statute 2324 (30 U.S.C. 28) shall not apply to any claim subject to section 4 of this Act during the time such claim is subject to such section.

SEC. 6. Within two years after the date of enactmen of this Act, the Secretary of the Interior shall determine the validity of any unpatented mining claims within Glacier Bay National Monument,

Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park and submit to the Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands. The Secretary shall also study and within two years submit to Congress his recommendations for modifications or adjustments to the existing boundaries of the Death Valley National Monument and the Glacier Bay National Monument to exclude significant mineral deposits and to decrease possible acquisition costs.

SEC. 7. Within four years after the date of enactment of this Act, the Secretary of the Interior shall determine the validity of any unpatented mining claims within Crater Lake National Park, Coronado National Memorial, and Glacier Bay National Monument, and submit to the Congress recommendations as to whether any valid or patented claims should be acquired by the United States.

SEC. 8. All mining claims under the Mining Law of 1872, as amended and supplemented (30 U.S.C. chapters 2, 12A, and 16 and sections 161 and 162) which lie within the boundaries of units of the National Park System shall be recorded with the Secretary of the Interior within one year after the effective date of this Act. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which was not valid on the effective date of this Act, or which becomes invalid thereafter. Within thirty days following the date of enactment of this Act, the Secretary shall publish notice of the requirement for such recordation in the Federal Register. He shall also publish similar notices in newspapers of general circulation in the areas adjacent to those units of the National Park System listed in section 3 of this Act.

SEC. 9. (a) Whenever the Secretary of the Interior finds on his own motion or upon being notified in writing by an appropriate scientific, historical, or archeological authority, that a district, site, building, structure, or object which has been found to be nationally significant in illustrating natural history or the history of the United States and which has been designated as a natural or historical landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for or removal or production of minerals or materials, he shall notify the person conducting such activity and submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a national landmark, to the Advisory Council on Historic Preservation, with a request for advice of the Council as to alternative measures that may be taken by the United States to mitigate or abate such activity.

(b) The Council shall within two years from the effective date of this section submit to the Congress a report on the actual or potential effects of surface mining activities on natural and historical landmarks and shall include with its report its recommendations for such legislation as may be necessary and appropriate to protect natural and historical landmarks from activities, including surface mining activities, which may have an adverse impact on such landmarks.

SEC. 10. If any provision of this Act is declared to be invalid, such declaration shall not affect the validity of any other provision hereof.

SEC. 11. The holder of any patented or unpatented mining claim subject to this Act who believes he has suffered a loss by operation of this Act, or by orders or regulations issued pursuant thereto, may bring an action in a United States district court to recover just compensation, which shall be awarded if the court finds that such loss constitutes a taking of property compensable under the Constitution. The court shall expedite its consideration of any claim brought pursuant to this section.

SEC. 12. Nothing in this Act shall be construed to limit the authority of the Secretary to acquire lands and interests in lands within the boundaries of any unit of the National Park System. The Secretary is to give prompt and careful consideration to any offer made by the owner of any valid right or other property within the areas named in section 6 of this Act to sell such right or other property, if such owner notifies the Secretary that the continued ownership of such right or property is causing, or would result in undue hardship.

SUNSHINE IN GOVERNMENT

SEC. 13. (a) Each officer or employee of the Secretary of the Interior who—

(1) performs any function or duty under this Act, or any Acts amended by this Act concerning the regulation of mining within the National Park System; and

(2) has any known financial interest (A) in any person subject to such Acts, or (B) in any person who holds a mining claim within boundaries of units of the National Park System;

shall, beginning on February 1, 1977, annually file with the Secretary a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary shall—

(1) act within ninety days after the date of enactment of this Act—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review

by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within such agency which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section or any regulation issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

38. National Scenic Highway Systems Study

Pub. L 93–87 (87 Stat. 268 § 134)

Pub. L. 93–87, title I, § 134, Aug. 13, 1973, 87 Stat. 268, provided that:

"(a) The Secretary of Transportation shall make a full and complete investigation and study to determine the feasibility of establishing a national system of scenic highways to link together and make more accessible to the American people recreational, historical, scientific, and other similar areas of scenic interest and importance. In the conduct of such investigation and study, the Secretary shall cooperate and consult with other agencies of the Federal Government, the Commission on Highway Beautification, the States and their political subdivisions, and other interested private organizations, groups, and individuals. The Secretary shall report his findings and recommendations to the Congress not later than July 1, 1974, including an estimate of the cost of implementing such a program. There is authorized to be appropriated $250,000 from the Highway Trust Fund to carry out this subsection.

"(b) The Secretary of Transportation shall make a full and complete investigation and study to examine problems of user access to parks, recreation areas (including public recreation areas on Federal lakes), historic sites and wildlife refuges. Such study and investigation shall include, but not be limited to, an analysis of the desirability and feasibility of a national scenic road and parkways system referred to in subsection (a) including benefits to the user if any and the total long range environmental impact of such system on the Nation's recreation resources; alternatives to private automobile access to parks and recreation resources, including mass transit; and special problems of safe access to urban and metropolitan parks and recreation resources. In the conduct of such investigations and study, the Secretary shall cooperate and consult with other agencies of the Federal Government, the States and their political subdivisions, and interested private organizations, groups and individuals. The Secretary shall report his findings and recommendations to the Congress not later than January 1, 1975, including an estimate of the cost of implementing any suggested programs."

39. National Trails System

16 U.S.C. 1241–1249

Sec.

§ 1241. National trails system; establishment; Congressional declaration of policy; initial components.

(a) In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within established scenic areas more remotely located.

(b) The purpose of this chapter is to provide the means for attaining these objectives by instituting a national system of recreation and scenic trails, by designating the Appalachian Trail and the Pacific Crest Trail as the initial components of that system, and by prescribing the methods by which, and standards according to which, additional components may be added to the system. (Pub. L. 90–543, § 2, Oct. 2, 1968, 82 Stat. 919.)

SHORT TITLE

Section 1 of Pub. L. 90–543 provided that: "This Act [which enacted this chapter] may be cited as the 'National Trails System Act'."

§ 1242. Composition of national trails system; recreation trails; scenic trails; connecting or side trails; uniform marker.

The national system of trails shall be composed of—

(a) National recreation trails, established as provided in section 1243 of this title, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.

(b) National scenic trails, established as provided in section 1244 of this title, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass.

(c) Connecting or side trails, established as provided in section 1245 of this title, which will provide additional points of public access to national recreation or national scenic trails or which will provide connections between such trails.

The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker for the national trails system. (Pub. L. 90–543, § 3, Oct. 2, 1968, 82 Stat. 919.)

§ 1243. National recreation trails; establishment and designation; prerequisites.

(a) The Secretary of the Interior, or the Secretary of Agriculture where lands administered by him are involved, may establish and designate national recreation trails, with the consent of the Federal agency, State, or political subdivision having jurisdiction over the lands involved, upon finding that—

(i) such trails are reasonably accessible to urban areas, and, or

(ii) such trails meet the criteria established in this chapter and such supplementary criteria as he may prescribe.

(b) As provided in this section, trails within park, forest, and other recreation areas administered by the Secretary of the Interior or the Secretary of Agriculture or in other federally administered areas may be established and designated as "National Recreation Trails" by the appropriate Secretary and, when no Federal land acquisition is involved—

(i) trails in or reasonably accessible to urban areas may be designated as "National Recreation Trails" by the Secretary of the Interior with the consent of the States, their political subdivisions, or other appropriate administering agencies, and

(ii) trails within park, forest, and other recreation areas owned or administered by States may be designated as "National Recreation Trails" by the Secretary of the Interior with the consent of the State.

(Pub. L. 90–543, § 4, Oct. 2, 1968, 82 Stat. 919.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1242 of this title.

§ 1244. National scenic trails.

(a) Establishment and designation; Appalachian Trail; administration; Pacific Crest Trail; administration; advisory councils; composition.

National scenic trails shall be authorized and designated only by Act of Congress. There are hereby established as the initial National Scenic Trails:

(1) The Appalachian Trail, a trail of approximately two thousand miles extending generally along the Appalachian Mountains from Mount Katahdin, Maine, to Springer Mountain, Georgia. Insofar as practicable, the right-of-way for such trail shall comprise the trail depicted on the maps identified as "Nationwide System of Trails, Proposed Appalachian Trail, NST–AT–101–May 1967", which shall be on file and available for public inspection in the office of the Director of the National Park Service. Where practicable, such rights-of-way shall include lands protected for it under agreements in effect as of October 2, 1968, to which Federal agencies and States were parties. The Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.

(2) The Pacific Crest Trail, a trail of approximately two thousand three hundred fifty miles,

extending from the Mexican-California border northward generally along the mountain ranges of the west coast States to the Canadian-Washington border near Lake Ross, following the route as generally depicted on the map, identified as "Nationwide System of Trails, Proposed Pacific Crest Trail, NST–PC–103–May 1967" which shall be on file and available for public inspection in the office of the Chief of the Forest Service. The Pacific Crest Trail shall be administered by the Secretary of Agriculture, in consultation with the Secretary of the Interior.

(3) The Secretary of the Interior shall establish an advisory council for the Appalachian National Scenic Trail, and the Secretary of Agriculture shall establish an advisory council for the Pacific Crest National Scenic Trail. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards of the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve without compensation or expense to the Federal Government for a term of five years and shall be appointed by the appropriate Secretary as follows:

(i) A member appointed to represent each Federal department or independent agency administering lands through which the trail route passes and each appointee shall be the person designated by the head of such department or agency;

(ii) A member appointed to represent each State through which the trail passes and such appointments shall be made from recommendations of the Governors of such States;

(iii) One or more members appointed to represent private organizations, including landowners and land users, that, in the opinion of the Secretary, have an established and recognized interest in the trail and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

(iv) The Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.

(b) Additional national scenic trails; feasibility studies; consultations; submission of proposals to the President and Congress; accompanying report.

The Secretary of the Interior, and the Secretary of Agriculture where lands administered by him are involved, shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other trails as national scenic trails. Such studies shall be made in consultation with the heads of other Federal agencies administering lands through which such additional proposed trails would pass and in cooperation with interested interstate, State, and local governmental agencies, public and private organizations, and landowners and land users concerned. When completed, such studies shall be the basis of appropriate proposals for additional national scenic trails which shall be submitted from time to time to the President and to the Congress. Such proposals shall be accompanied by a report, which shall be printed as a House or Senate document, showing among other things—

(1) the proposed route of such trail (including maps and illustrations);

(2) the areas adjacent to such trails, to be utilized for scenic, historic, natural, cultural, or developmental, purposes;

(3) the characteristics which, in the judgment of the appropriate Secretary, make the proposed trail worthy of designation as a national scenic trail;

(4) the current status of land ownership and current and potential use along the designated route;

(5) the estimated cost of acquisition of lands or interests in lands, if any;

(6) the plans for developing and maintaining the trail and the cost thereof;

(7) the proposed Federal administering agency (which, in the case of a national scenic trail wholly or substantially within a national forest, shall be the Department of Agriculture);

(8) the extent to which a State or its political subdivisions and public and private organizations might reasonably be expected to participate in acquiring the necessary lands in the administration thereof; and

(9) the relative uses of the lands involved, including: the number of anticipated visitor-days for the entire length of, as well as for segments of, such trail; the number of months which such trail, or segments thereof, will be open for recreation purposes; the economic and social benefits which might accrue from alternate land uses; and the estimated man-years of civilian employment and expenditures expected for the purposes of maintainance, supervision, and regulation of such trail.

(c) Routes subject to consideration for designation as national scenic trails.

The following routes shall be studied in accordance with the objectives outlined in subsection (b) of this section:

(1) Continental Divide Trail, a three-thousand-one-hundred-mile trail extending from near the Mexican border in southwestern New Mexico northward generally along the Continental Divide to the Canadian border in Glacier National Park.

(2) Potomac Heritage Trail, an eight-hundred-and-twenty-five-mile trail extending generally from the mouth of the Potomac River to its sources in Pennsylvania and West Virginia, including the one-hundred-and-seventy-mile Chesapeake and Ohio Canal towpath.

(3) Old Cattle Trails of the Southwest from the

vicinity of San Antonio, Texas, approximately eight hundred miles through Oklahoma via Baxter Springs and Chetopa, Kansas, to Fort Scott, Kansas, including the Chisholm Trail, from the vicinity of San Antonio or Cuero, Texas, approximately eight hundred miles north through Oklahoma to Abilene, Kansas.

(4) Lewis and Clark Trail, from Wood River, Illinois, to the Pacific Ocean in Oregon, following both the outbound and inbound routes of the Lewis and Clark Expedition.

(5) Natchez Trace, from Nashville, Tennessee, approximately six hundred miles to Natchez, Mississippi.

(6) North Country Trail, from the Appalachian Trail in Vermont, approximately three thousand two hundred miles through the States of New York, Pennsylvania, Ohio, Michigan, Wisconsin, and Minnesota, to the Lewis and Clark Trail in North Dakota.

(7) Kittanning Trail from Shirleysburg in Huntingdon County to Kittanning, Armstrong County, Pennsylvania.

(8) Oregon Trail, from Independence, Missouri, approximately two thousand miles to near Fort Vancouver, Washington.

(9) Santa Fe Trail, from Independence, Missouri, approximately eight hundred miles to Santa Fe, New Mexico.

(10) Long Trail, extending two hundred and fifty-five miles from the Massachusetts border northward through Vermont to the Canadian border.

(11) Mormon Trail, extending from Nauvoo, Illinois, to Salt Lake City, Utah, through the States of Iowa, Nebraska, and Wyoming.

(12) Gold Rush Trails in Alaska.

(13) Mormon Battalion Trail, extending two thousand miles from Mount Pisgah, Iowa, through Kansas, Colorado, New Mexico, and Arizona to Los Angeles, California.

(14) El Camino Real from St. Augustine to San Mateo, Florida, approximately 20 miles along the southern boundary of the St. Johns River from Fort Caroline National Memorial to the St. Augustine National Park Monument. (Pub. L. 90–543, § 5, Oct. 2, 1968, 82 Stat. 920.)

(15) Bartram Trail, extending through the States of Georgia, North Carolina, South Carolina, Alabama, Florida, Louisiana, Mississippi, and Tennessee.

(16) Daniel Boone Trail, extending from the vicinity of Statesville, North Carolina, to Fort Boonesborough State Park, Kentucky.

(17) Desert Trail, extending from the Canadian border through parts of Idaho, Washington, Oregon, Nevada, California, and Arizona, to the Mexican border.

(18) Dominguez-Escalante Trail, extending approximately two thousand miles along the route of the 1776 expedition led by Father Francisco Atanasio Dominguez and Father Silvestre Velez de Escalante, originating in Santa Fe, New Mexico; proceeding northwest along the San Juan, Dolores, Gunnison, and White Rivers in Colorado; thence westerly to Utah Lake; thence southward to Arizona and returning to Santa Fe.

(19) Florida Trail, extending north from Everglades National Park, including the Big Cypress Swamp, the Kissimee Prairie, the Withlacoochee State Forest, Ocala National Forest, Osceola National Forest, and Black Water River State Forest, said completed trail to be approximately one thousand three hundred miles long, of which over four hundred miles of trail have already been built.

(20) Indian Nations Trail, extending from the Red River in Oklahoma approximately two hundred miles northward through the former Indian nations to the Oklahoma-Kansas boundary line.

(21) Nez Perce Trail extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana.

(22) Pacific Northwest Trail, extending approximately one thousand miles from the Continental Divide in Glacier National Park, Montana, to the Pacific Ocean beach of Olympic National Park, Washington, by way of—

(A) Flathead National Forest and Kootenai National Forest in the State of Montana;

(B) Kaniksu National Forest in the State of Idaho; and

(C) Colville National Forest; Okanogan National Forest, Pasayten Wilderness Area, Ross Lake National Recreation Area, North Cascades National Park, Mount Baker, the Skagit River, Deception Pass, Whidbey Island, Olympic National Forest, and Olympic National Park in the State of Washington. (Pub. L. 90–543, § 5, Oct. 2, 1968, 82 Stat. 920, as amended Pub. L. 94–527, Oct. 17, 1976.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1242, 1246 of this title.

§ 1245. Connecting or side trails; establishment, designation, and marking as components of national trails system; location.

Connecting or side trails within park, forest, and other recreation areas administered by the Secretary of the Interior or Secretary of Agriculture may be established, designated, and marked as components of a national recreation or national scenic trail. When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, State, or local governmental agencies with their consent: *Provided*, That such trails provide additional points of public access to national recreation or scenic trails. (Pub. L. 90–543, § 6, Oct. 2, 1968, 82 Stat. 922.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1242 of this title.

§ 1246. Administration and development of national trails system.

(a) Rights-of-way for national scenic trails; criteria for selection; notice; agreement by federal officials having jurisdiction over selected lands; consultations.

Pursuant to section 1244(a) of this title, the appropriate Secretary shall select the rights-of-way for National Scenic Trails and shall publish notice

thereof in the Federal Register, together with appropriate maps and descriptions: *Provided,* That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) Relocation of segment of national scenic trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress.

After publication of notice in the Federal Register, together with appropriate maps and descriptions, the Secretary charged with the administration of a national scenic trail may relocate segments of a national scenic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: *Provided,* That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) Facilities on national scenic trails; permissible activities; use of motorized vehicles; establishment of uniform marker; placement of uniform markers.

National scenic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided,* That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further,* That private lands included in the national recreation or scenic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation and scenic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established.

(d) Use and acquisition of lands within exterior boundaries of areas included in right-of-way; acreage limitations.

Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation or scenic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange: *Provided,* That not more than twenty-five acres in any one mile may be acquired without the consent of the owner.

(e) Right-of-way lands outside exterior boundaries of federally administered areas; cooperative agreements or acquisition; failure to agree or acquire; agreement or acquisition by Secretary concerned; right of first refusal for original owner upon disposal.

Where the lands included in a national trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic trail: *Provided,* That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein within two years after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (g) of this section. The lands involved in such

rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided*, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(f) Exchange of property within the right-of-way by Secretary of Interior; property subject to exchange; equalization of value of property; exchange of national forest lands by Secretary of Agriculture.

The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(g) Condemnation proceedings to acquire private lands; limitations; availability of funds for acquisition of lands or interests therein.

The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided*, That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than twenty-five acres in any one mile and when used such authority shall be limited to the most direct or practicable connecting trail right-of-way: *Provided further*, That condemnation is prohibited with respect to all acquisition of lands or interest in lands for the purposes of the Pacific Crest Trail. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this chapter.

(h) Development and maintenance of national recreation or scenic trails; cooperation with the states over portions located outside of federally administered areas; cooperative agreements; reservation of right-of-way for trails in conveyances by Secetary of Interior.

The Secretary charged with the administration of a national recreation or scenic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of a national scenic trail either within or outside a federally administered area.

Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this chapter.

(i) Regulations; issuance; concurrence and consultation; revision; publication; violations; penalties.

The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation or scenic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. (Pub. L. 90–543, § 7, Oct. 2, 1968, 82 Stat. 922.)

§ 1247. State and local area recreation trails.

(a) Secretary of Interior to encourage states, political subdivisions, and private interests; financial assistance for state and local projects.

The Secretary of the Interior is directed to encourage States to consider, in their comprehensive statewide outdoor recreation plans and proposals for financial assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act, needs and opportunities for establishing park, forest, and other recreation trails on lands owned or administered by States, and recreation trails on lands in or near urban areas. He is further directed, in accordance with the authority contained in the Act of May 28, 1963, to encourage States, political subdivisions, and private interests, including nonprofit organizations, to establish such trails.

(b) Secretary of Housing and Urban Development to encourage metropolitan and other urban areas; administrative and financial assistance in connection with recreation and transportation planning; administration of urban open-space program.

The Secretary of Housing and Urban Develop-

ment is directed, in administering the program of comprehensive urban planning and assistance under section 461 of Title 40, to encourage the planning of recreation trails in connection with the recreation and transportation planning for metropolitan and other urban areas. He is further directed, in administering the urban open-space program under title VII of the Housing Act of 1961, to encourage such recreation trails.

(c) Secretary of Agriculture to encourage states, local agencies, and private interests.

The Secretary of Agriculture is directed, in accordance with authority vested in him, to encourage States and local agencies and private interests to establish such trails.

(d) Designation and marking of trails; approval of Secretary of Interior.

Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior. (Pub. L. 90–543, § 8, Oct. 2, 1968, 82 Stat. 925.)

§ 1248. Easements and rights-of-way; conditions; cooperation of federal agencies with Secretary of Interior and Secretary of Agriculture.

(a) The Secretary of the Interior or the Secretary of Agriculture as the case may be, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this chapter.

(b) The Department of Defense, the Department of Transportation, the Interstate Commerce Commission, the Federal Communications Commission, the Federal Power Commission, and other Federal agencies having jurisdiction or control over or information concerning the use, abandonment, or disposition of roadways, utility rights-of-way, or other properties which may be suitable for the purpose of improving or expanding the national trails system shall cooperate with the Secretary of the Interior and the Secretary of Agriculture in order to assure, to the extent practicable, that any such properties having values suitable for trail purposes may be made available for such use. (Pub. L. 90–543, § 9, Oct. 2, 1968, 82 Stat. 925.)

§ 1249. Authorization of appropriations.

There are hereby authorized to be appropriated for the acquisition of lands or interests in lands not more than $5,000,000 for the Appalachian National Scenic Trail and not more than $500,000 for the Pacific Crest National Scenic Trail. (Pub. L. 90–543, § 10, Oct. 2, 1968, 82 Stat. 926.)

40. Noxious Weeds

7 U.S.C. 2801–2813

Sec.

§2801. Congressional findings.

The importation or distribution in interstate commerce of noxious weeds, except under controlled conditions, allows the growth and spread of such weeds which iterfere with the growth of useful plants, clog waterways and interefere with navigation, cause disease, or have other adverse effects upon man or his environment and therefore is detrimental to the agriculture and commerce of the United States and to the public health. The uncontrolled distribution within the United States of noxious weeds after their importation or interstate distribution has like detrimental effects and allowing such distribution encourages and facilitates the burdening and obstructing of interstate and foreign commerce, and is inimical to the public interest. Accordingly, the Congress hereby determines that the regulation of transactions in, and movement of, noxious weeds as provided in this chapter is necessary to prevent and eliminate burdens upon and obstructions to interstate and foreign commerce and to protect the public

welfare. (Pub. L. 93–629, § 2, Jan. 3. 1975, 88 Stat. 2148.)

SHORT TITLE

Section 1 of Pub. L. 93–629 provided: "That this Act [enacting this chapter] may be cited as the 'Federal Noxious Weed Act of 1974'."

§ 2802. Definitions.

As used in this chapter, except where the context otherwise requires:

(a) "Secretary" means the Secretary of Agriculture of the United States or any other person to whom authority may be delegated to act in his stead.

(b) "Authorized inspector" means any employee of the Department of Agriculture, or any employee of any other agency of the Federal Government or of any State or other governmental agency which is cooperating with the Department in administration of any provisions of this chapter, who is authorized by the Secretry to perform assigned duties under this chapter.

(c) "Noxious weed" means any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish and wildlife resources of the United States or the public health.

(d) "United States" means any of the States, territories, or districts of the United States.

(e) "Interstate" means from any State, territory, or district of the United States into or through any other State, territory, or district.

(f) "District" means the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States.

(g) "Move" means deposit for transmission in the mails, ship, offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved, by mail or otherwise. (Pub. L. 93–629, § 3, Jan. 3, 1975, 88 Stat. 2148.)

§ 2803. Movement of noxious weeds into or through the United States or interstate.

(a) Permits; regulations.

No person shall knowingly move any noxious weed, identified in a regulation promulgated by the Secretary, into or through the United States or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as he may promulgate under this chapter to prevent the dissemination into the United States, or interstate, of such noxious weeds.

(b) Refusal of permit to prevent danger of dissemination.

The Secretary may refuse to issue a permit for the movement of any such noxious weed when, in his opinion, such movement would involve a danger of dissemination of such noxious weeds into the United States or interstate.

(c) Unlawful sale, purchase, and transportation, and advertisements for unlawful sale, purchase, and transportation.

No person shall knowingly sell, purchase, barter, exchange, give, or receive any such noxious weed which has been moved in violation of subsection (a) of this section, or knowingly deliver or receive for transportation or transport, in interstate or foreign commerce, any advertisement to sell, purchase, barter, exchange, give, or receive any such noxious weed which is prohibited from movement in such commerce under this chapter. (Pub. L. 93–629, § 4, Jan. 3, 1975, 88 Stat. 2149.)

§ 2804. Quarantine.

(a) Regulations for inspection.

The Secretary may promulgate such quarantines and other regulations requiring inspection of products and articles of any character whatsoever and means of conveyance, specified in the regulations, as a condition of their movement into or through the United States and otherwise restricting or prohibiting such movement, as he deems necessary to prevent the dissemination into the United States of any noxious weeds, and it shall be unlawful for any person to move any products, articles, or means of conveyance into or through the United States contrary to any such regulation.

(b) Temporary quarantine of areas suspected of infestation; maximum period.

Whenever the Secretary has reason to believe that an infestation of noxious weeds exist in any State, territory, or district, he may by regulation temporarily quarantine such jurisdiction, or a portion thereof, and by regulation may restrict or prohibit the interstate movement from the quarantined area of any products and articles of any character whatsoever and means of conveyance, capable of carrying such noxious weeds, and after promulgation of such quarantine and other regulations, it shall be unlawful for any person to move interstate from a quarantined area any such products, articles, or means of conveyance, specified in the regulations, except in accordance with such regulations: *Provided, however*, That such quarantine and regulations shall expire at the close of the ninetieth day after their promulgation.

(c) Promulgation after determination of necessity at public hearing.

However, if, after public hearing, the Secretary determines, on the basis of the information received at the hearing and other information available to him, that such a quarantine and regulations are necessary in order to prevent the interstate spread of noxious weeds from any State, territory, or district in which he determines an infestation of noxious weeds exists, and to protect the agriculture, commerce, fish, or wildlife resources of the United States or the public health, he shall promulgate such quarantine and other regulations as he determines are appropriate for such purposes, and thereafter it shall be unlawful for any person to move interstate from any quaran-

tined area any regulated products, articles, or means of conveyance except in accordance with such regulations. (Pub. L. 93–629, § 5, Jan. 3, 1975, 88 Stat. 2149.)

§ 2805. Measures to prevent dissemination.

(a) Emergency disposal of infested products and articles.

Except as provided in subsection (c) of this section, the Secretary may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any noxious weed, seize, quarantine, treat, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, in bond or otherwise, and which he has reason to believe is infested by any noxious weed or contains any such weed, or which has moved into the United States, or interstate, and which he has reason to believe was infested by or contained any noxious weed at the time of such movement; and any noxious weed, product, article, or means of conveyance which is moving into or through the United States, or interstate, or has moved into the United States, or interstate, in violation of this chapter or any regulation hereunder.

(b) Orders requiring disposal by owner; enforcement.

Except as provided in subsection (c) of this section, the Secretary may order the owner of any product, article, means of conveyance, or noxious weed subject to disposal under subsection (a) of this section, or his agent, to treat, destroy, or make other disposal of such product, article, means of conveyance, or noxious weed, without cost to the Federal Government and in such manner as the Secretary deems appropriate. The Secretary may apply to the United States District Court, or to the United States court of any territory or possession, for the judicial district in which such person resides or transacts business or in which the product, article, means of conveyance, or noxious weed is found, for enforcement of such order by injunction, mandatory or otherwise. Process in any such case may be served in any judicial district wherein the defendant resides or transacts business or may be found, and subpenas for witnesses who are required to attend a court in any judicial district in such a case may run to any other judicial district.

(c) Destruction, export, or return as the least drastic action.

No product, article, means of conveyance, or noxious weed shall be destroyed, exported, or returned to shipping point of origin, or ordered to be destroyed, exported, or so returned under this section, unless in the opinion of the Secretary there is no less drastic action which would be adequate to prevent the dissemination of noxious weeds into the United States or interstate.

(d) Actions against United States by owners; limitations; just compensation for unlawful disposal.

The owner of any product, article, means of conveyance, or noxious weed destroyed, or otherwise disposed of, by the Secretary under this section, may bring an action against the United States in the United States District Court for the District of Columbia, within one year after such destruction or disposal, and recover just compensation for such destruction or disposal of such product, article, means of conveyance, or noxious weed (not including compensation for loss due to delays incident to determining its eligibility for movement under this chapter) if the owner establishes that such destruction or disposal was not authorized under this chapter. Any judgment rendered in favor of such owner shall be paid out of the money in the Treasury appropriated for administration of this chapter. (Pub. L. 93–629, § 6, Jan. 3, 1975, 88 Stat. 2149.)

§ 2806. Warrantless search of persons and goods; search of premises with warrants; issuance and execution of warrants.

Any authorized inspector, when properly identified, shall have authority (a) without a warrant, to stop any person or means of conveyance moving into the United States, and inspect any noxious weeds and any products and articles of any character whatsoever, carried thereby, and inspect such means of conveyance, to determine whether such person or means of conveyance is moving any noxious weed, product, article, or means of conveyance contrary to this chapter or any regulation under this chapter; (b) without a warrant, to stop any person or means of conveyance moving through the United States or interstate, and inspect any noxious weeds and any products and articles of any character whatsoever carried thereby, and inspect such means of conveyance, to determine whether such person or means of conveyance is moving any noxious weed, product, article, or means of conveyance contrary to this chapter or any regulation thereunder, if such inspector has probable cause to believe that such person or means of conveyance is moving any noxious weed regulated under this chapter; and (c) to enter, with a warrant, any premises in the United States, for purposes of any inspections or other actions necessary under this chapter. Any judge of the United States or of a court of record of any State, territory, or district, or a United States commissioner, may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause to believe that there are on certain premises any products, articles, means of conveyance, or noxious weeds subject to this chapter, issue warrants for the entry of such premises for purposes of any inspection or other action necessary under this chapter, except as otherwise provided in section 2808 of this title. (Pub. L. 93–629, § 7, Jan. 3, 1975, 88 Stat. 2150.) Such warrants may be executed by any authorized inspector or any United States marshal.

§ 2807. Penalties.

Any person who knowingly violates section 2803 or 2804 of this title, or any regulation promulgated under this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or both. (Pub. L. 93–629, § 8, Jan. 3, 1975, 88 Stat. 2151.)

§ 2808. Cooperation with other Federal, State, and Local agencies.

(a) The Secretary is authorized to cooperate with other Federal agencies, agencies of States, territories, or districts, or political subdivisions thereof, farmers' associations, and similar organizations, and individuals in carrying out operations or measures in the United States to eradicate, suppress, control, or prevent or retard the spread of any noxious weed. The Secretary is authorized to appoint employees of other agencies of the Federal Government or any agencies of any State, territory, or district, or political subdivisions thereof, as collaborators to assist in administration of the provisions of this chapter, pursuant to cooperative agreements with such agencies, whenever he determines that such appointments would facilitate administration of this chapter.

(b) In performing the operations or measures authorized by subsection (a) of this section, the cooperating State or other governmental agency shall be responsible for the authority necessary to carry out the operations or measures on all lands and properties within the State or other jurisdiction involved, other than those owned or controlled by the United States Government, and for such other facilities and means as in the discretion of the Secretary are necessary. (Pub. L. 93–629, § 9, Jan. 3, 1975, 88 Stat. 2151.)

§ 2809. Regulations.

The Secretary is authorized to promulgate regulations necessary to effectuate the provisions of this chapter. However, any regulation identifying a noxious weed under section 2803 of this title shall be promulgated only after publication of a notice of the proposed regulation and, when requested by any interested person, a public hearing on the proposal. Any such regulation shall be based upon the information received at any such hearing and other information available to the Secretary and a determination by the Secretary that the plant is within the definition of a noxious weed in section 2802(c) of this title and that its dissemination in the United States may reasonably be expected to have, to a serious degree, any effect specified in section 2802(c) of this title. (Pub. L. 93–629, § 10, Jan. 3, 1975, 88 Stat. 2151.)

§ 2810. Authorization of appropriations.

There are hereby authorized to be appropriated such sums as Congress may from time to time determine to be necessary for the administration of this chapter. Any sums so appropriated shall be available for expenditures for the purchase, hire, maintenance, operation, and exchange of aircraft and other means of conveyance, and for such other expenses as may be necessary to carry out the purposes of this chapter. However, unless specifically authorized in other legislation or provided for in appropriations, no part of such sums shall be used to pay the cost or value of property injured or destroyed under section 2808 of this title. (Pub. L. 93–629, § 11, Jan. 3, 1975, 88 Stat. 2151.)

§ 2811. Inapplicability to certain shipments.

The provisions of this chapter shall not apply to shipments of seed subject to the Federal Seed Act (7 U.S.C. 1551 et seq.) and this chapter shall not amend or repeal any of the provisions of said Act or of the Plant Quarantine Act of August 20, 1912 (7 U.S.C. 151–154, 156–164a, 167), the Federal Plant Pest Act (7 U.S.C. 150aa–150jj), or any other Federal laws. (Pub. L. 93–629, § 12, Jan. 3, 1975, 88 Stat. 2152.)

§ 2812. Inconsistent State and local laws.

The provisions of this chapter shall not invalidate the provisions of the laws of any State or political subdivision thereof, or of any territory or district of the United States relating to noxious weeds, except that no such jurisdiction may permit any action that is prohibited under this chapter. (Pub. L. 93–629, § 13, Jan. 3, 1975, 88 Stat. 2152.)

§ 2813. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons and circumstances shall not be affected thereby. (Pub. L. 93–629, § 14, Jan. 3, 1975, 88 Stat. 2152.)

41. Open Space Land

42 U.S.C. 1500–1500d–1

Sec.

§ 1500. Congressional declaration of findings and purpose.

(a) The Congress finds that the rapid expansion of the Nation's urban areas and the rapid growth of the population within such areas has resulted in severe problems of urban and suburban living for the preponderant majority of the Nation's present and future population, including the lack of valuable open-space land for recreational and other purposes.

(b) The Congress further finds that there is a need for the additional provision of parks and other open space in the built-up portions of urban areas especially in low income neighborhoods and communities and a need for greater and better coordinated State and local efforts to make available and improve open-space land throughout entire urban areas.

(c) The Congress further finds that there is a need for timely action to preserve and restore areas, sites, and structures of historic or architectural value in order that these remaining evidences of our history and heritage shall not be lost or destroyed through the expansion and development of the Nation's urban areas.

(d) It is the purpose of this chapter to help curb urban sprawl and prevent the spread of urban blight and deterioration, to encourage more economic and desirable urban development, to assist in preserving areas and properties of historic or architectural value, and to help provide necessary recreational, conservation, and scenic areas by assisting State and local public bodies in taking prompt action to (1) provide, preserve, and develop open-space land in a manner consistent with the planned long-range development of the Nation's urban areas, (2) acquire, improve, and restore areas, sites, and structures of historic or architectural value, and (3) develop and improve open space and other public urban land, in accordance with programs to encourage and coordinate local public and private efforts toward this end. (Pub. L. 87–70, title VII, § 701, June 30, 1961, 75 Stat. 183; Pub. L 89–117, title IX, § 901 (b), (c), Aug. 10, 1965, 79 Stat. 494; Pub. L. 89–754, title VI, § 605 (b), (c), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–609 substituted "the rapid expansion of the Nation's urban areas and the rapid growth of population within such areas has resulted in severe problems of urban and suburban living for the preponderant majority of the Nation's present and future population, including the lack of valuable open-space land for recreational and other purposes" for "a combination of economic, social, governmental, and technological forces have caused a rapid expansion of the Nation's urban areas, which has created critical problems of service and finance for all levels of government and which, combined with a rapid population growth in such areas, threatens severe problems of urban and suburban living, including the loss of valuable open-space land in such areas, for the preponderant majority of the Nation's present and future population."

Subsec. (b). Pub. L. 91–609 substituted "a need for the additional provision of parks and other open space in the built-up portions of urban areas especially in low income neighborhoods and communities and a need for greater and better coordinated State and local efforts to make available and improve open-space land throughout entire urban areas" for "an urgent need both for the additional provision of parks and other open-space areas in the developed portions of the Nation's urban areas and for greater and better coordinated local efforts to beautify and improve open space and other public land throughout urban areas to facilitate their increased use and enjoyment by the Nation's urban population".

Subsec. (c). Pub. L. 91–609 deleted "past" from "past history and heritage".

Subsec. (d). Pub. L. 91–609 substituted "local public bodies" for "local governments", cl. (1) provision "open-space land in a manner consistent with the planned long-range development of the Nation's urban areas" for "open-space land which is essential to the proper long-range development and welfare of the Nation's urban areas, in accordance with plans for the allocation of such land for open-space uses", and cl. (3) term "develop" for "beautify".

1966—Subsec. (c). Pub. L. 89–754, § 605(b), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 89–754, § 605(b), (c), redesignated former subsec. (c) as (d), and stated an additional purpose of this chapter to be to assist in preserving areas and properties of historic or architectural value, added cl. (2), and redesignated former cl. (2) as (3), respectively.

1965—Subsec. (b). Pub. L. 89–117, § 901(b), redesignated former subsec. (b) as subsec. (c) and added subsec. (b).

Subsec. (c). Pub. L. 89–117, § 901 (b), (c), redesignated former subsec. (b) as subsec. (c) and, in subsec. (c) as so redesignated, substituted "(1) provide, preserve, and develop" for "preserve" and "uses, and (2) beautify and improve open space and other public urban land, in accordance with programs to encourage and co-ordinate local public and private efforts toward this end" for "purposes".

EFFECTIVE DATE OF 1970 AMENDMENT

Section 401 of Pub. L. 91–609 provided in part that amendment of this chapter by section 401 of Pub. L. 91–609, shall be effective July 1, 1971.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3914 of this title.

§ 1500a. Grants to States and local public bodies for acquisition and for development of open-space land.

(a) Authorization; limitation on amount of grant; limitation on donations for non-Federal share.

The Secretary is authorized to make grants to States and local public bodies to help finance (1) the acquisition of title to, or other interest in, open-space land in urban areas and (2) the development of open-space or other land in urban areas for open-space uses. The amount of any such grant shall not exceed 50 per centum of the eligible project cost, as approved by the Secretary, of such acquisition or development. Not more than 50 per centum of the non-Federal share of such eligible project cost may, to the extent authorized in regulations established by the Secretary, be made up by donations of land or materials.

(b) Restrictions on use of grants.

No grants under this chapter shall be made to (1) defray ordinary State or local governmental expenses, (2) help finance the acquisition by a public body of land located outside the urban area for which it exercises (or participates in the exercise of) responsibilities consistent with the purpose of this chapter, (3) acquire and clear developed land in built-up urban areas unless the local governing body determines that adequate open-space land cannot be effectively provided through the use of existing undeveloped land, or (4) provide assistance for historic and architectural preservation purposes, except

for districts, sites, buildings, structures, and objects which the Secretary of the Interior determines meet the criteria used in establishing the National Register.

(c) Determination of further terms and conditions for assistance.

The Secretary may set such further terms and conditions for assistance under this chapter as he determines to be desirable.

(d) Review of applications; consultation with Secretary of the Interior; exchange of information.

The Secretary shall consult with the Secretary of the Interior on the general policies to be followed in reviewing applications for grants under this chapter. To assist the Secretary in such review, the Secretary of the Interior shall furnish him (1) appropriate information on the status of national and statewide recreation and historic preservation planning as it affects the areas to be assisted with such grants, and (2) the current listing of any districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture which may be contained on a National Register maintained by the Secretary of the Interior pursuant to other provisions of law. The Secretary shall provide current information to the Secretary of the Interior from time to time on significant program developments.

(e) Technical assistance.

The Secretary may provide such technical assistance to States and local public bodies as may be required to effectively carry out activities under this section. (Pub. L. 87–70, title VII, § 702, June 30, 1961, 75 Stat. 184; Pub. L. 88–560, title X, § 1001, Sept 2, 1964, 78 Stat. 806; Pub. L 89–117, title IX, §§ 902(a), (b), 903, 904, 909(b), (c), Aug 10, 1965, 79 Stat. 495, 497; Pub. L. 89–754, title VI, § 605(d), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 90–19, § 18(c), (d), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title VI, § 606(a), Aug. 1, 1968, 82 Stat. 534; Pub. L. 91–152, title III, § 303, Dec. 24, 1969, 83 Stat. 391; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–609 in revising the provisions deleted "to enter into contracts" preceding "to make grants", substituted "help finance (1) the acquisition of title to, or other interest in, open-space land in urban areas and (2) the development of open-space or other land in urban areas for open-space uses" for "help finance the acquisition of title to, or other permanent interests in, such land, and the development, for open-space uses, of land acquired under this chapter", prescribed limitation on donations for non-Federal share, and deleted full faith and credit provision respecting Federal pledging for payment of grants.

Subsec. (b). Pub. L. 91–609 redesignated former subsec. (c) as (b), inserted numbered designations, and added items (3) and (4). Former subsec. (b) authorization of appropriation provisions for $310,000,000 prior to July 1, 1969, and $460,000,000 prior to July 1, 1971, are now covered by section 1500d of this title.

Subsec. (c). Pub. L. 91-609 redesignated former subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub L 91–609 redesignated former subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 91-609 incorporated technical assistance provisions of former section 1500d(a) of this title. Former subsec. (e) redesignated (d).

1969—Subsec. (b). Pub. L. 91–152 substituted "July 1, 1971" for "July 1, 1970".

1968—Subsec. (b). Pub. L. 90–448 authorized appropriations of not more than $460,000,000 prior to July 1, 1970, and eliminated provisions which permitted the Secretary to contract to make grants under section 1500c–1 of this title aggregating not more than $64,000,000, and grants under section 1500c–2 of this title aggregating not more than $36,000,000.

1967—Pub. L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a), (b), and (d) of this section.

Subsec. (a). Pub. L. 90–19 substituted "Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary')" for "Housing and Home Finance Administrator (hereinafter referred to as the 'Administrator')".

1966—Subsec. (e). Pub. L. 89–754 substituted "Secretary" for "Administrator" wherever appearing, designated existing provisions as cl. (1), substituted therein "national and statewide recreation and historic preservation planning as it affects the areas to be assisted with such grants" for "recreational planning for the areas to be assisted with the grants", and added cl. (2).

1965—Subsec. (a). Pub. L. 89–117, §§ 902(a), 903, 909(b), inserted development of open space land as one of the purposes for which grants were to be made, added the development, for open space uses, of land acquired under this chapter as one of the uses to which granted funds could be put, raised from 20 percent to 50 percent of total cost the maximum grant allowable, removed the proviso increasing the maximum grant to 30 percent in the case of a grant to a public body exercising open space responsibility for all or a substantial part of the urban area, and struck out requirement that local public bodies to which funds were granted be acceptable to the Administrator as capable of carrying out the provisions of the chapter.

Subsec. (b). Pub. L. 89–117, § 904, substituted "$310,000,000" for "$75,000,000" and added proviso that, of that sum, no more than $64,000,000 could be for grants under section 1500c–1 of this title and no more than $36,000,000 could be for grants under section 1500c–2 of this title.

Subsec. (c). Pub. L. 89–117, § 902(b), removed development costs from the list of uses to which grants may not be put.

Subsec. (e). Pub. L. 89–117, § 909(c), substituted "assisted" for "served by the open-space land acquired".

1964—Subsec. (b). Pub. L. 88–560, substituted "$75,000,000" for "$50,000,000", and inserted "All funds so appropriated shall remain available until expended."

§ 1500b. Planning requirements.

The Secretary shall make grants under section 1500a of this title only if he finds that such assistance is needed for carrying out a unified, or officially coordinated program, meeting criteria established by him, for the provision and development of open-space land which is a part of, or is consistent with, the comprehensively planned development of the urban area. (Pub. L. 87–70, title VII, § 703, June 30, 1961, 75 Stat. 184; Pub. L 89–117, title IX, § 905, Aug 10, 1965, 79 Stat. 495; Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782.)

AMENDMENTS

1970—Pub. L. 91–609 eliminated subsec. (a) designation for existing provisions, substituted "shall make grants under section 1500a of this title" for "shall enter into contracts to make grants under sections 1500a and 1500c–1 of this title", inserted "which is a part of, or is consistent with," preceding "the comprehensively planned development", and deleted subsec. (b) provisions for the taking of such action by the Secretary as to assure

that local governing bodies are preserving maximum open-space land, with minimum of cost, through use of existing public land, use of special tax, zoning, and subdivision provisions, and continuation of appropriate private use of open-space land through acquisition of leaseback, acquisition of restrictive easements, and other available means.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

1965—Subsec. (a). Pub. L. 89-117 substituted provisions which required that, for grants under sections 1500a and 1500c-1 of this title, there be a unified or officially coordinated program for the provision and development of open-space land as part of the comprehensively planned development of the urban area for provisions which required only that, for grants for acquisition of land under the entire chapter, the use of the land for permanent open space be important and which limited the definition of comprehensive planning to the definition found in section 461(d) of Title 40.

§ 1500c. Conversions to other uses.

No open-space land for the acquisition of which a grant has been made under section 1500a of this title shall be converted to uses not originally approved by the Secretary without his prior approval. Prior approval will be granted only upon satisfactory compliance with regulations established by the Secretary. Such regulations shall require findings that (1) there is adequate assurance of the substitution of other open-space land of as nearly as feasible equivalent usefulness, location, and fair market value at the time of the conversion; (2) the conversion and substitution are needed for orderly growth and development; and (3) the proposed uses of the converted and substituted land are in accord with the then applicable comprehensive plan for the urban area, meeting criteria established by the Secretary. (Pub. L. 87-70, title VII, § 704, June 30, 1961, 75 Stat. 185; Pub. L 89-117, title IX, § 909(d), Aug 10, 1965, 79 Stat. 497; Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782.)

AMENDMENTS

1970—Pub. L. 91-609 in revising the text substituted "section 1500a of this title" for "this chapter" and provisions for satisfactory compliance with certain findings prescribed by regulations for prior similar statutory provisions.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing.

1965—Pub. L. 89-117 limited the prohibition against conversion without the Administrator's approval by providing that such prohibition applied only to lands acquired with grant funds under this chapter.

§ 1500c-1. Conversions of land involving historic or architectural purposes.

No open-space land involving historic or architectural purposes for which assistance has been granted under this chapter shall be converted to use for any other purpose without the prior approval of the Secretary of the Interior. (Pub. L. 87-70, title VII, § 705, as added Pub. L. 89-117, title IX, § 906, Aug. 10, 1965, 79 Stat. 496, and amended Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1782.)

AMENDMENTS

1970—Pub. L. 91-609 substituted requirement of Secretary's approval of conversions of land involving historic or architectural purposes for prior provisions for grants, for provision of open-space land in built-up urban areas, now covered in section 1500a(a) of this title.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing.

§ 1500c-2. Acquisition of interests to guide urban development.

In order to encourage the acquisition of interests in undeveloped or predominantly undeveloped land which, if withheld from commercial, industrial, and residential development, would have special significance in helping to shape economic and desirable patterns of urban growth (including growth outside of existing urban areas which is directly related to the development of new communities or the expansion and revitalization of existing communities), the Secretary may make grants to State and local public bodies for the acquisition of such interests in an amount not to exceed 75 per centum of the cost of such acquisition. In the case of any interests acquired pursuant to this section, the Secretary may approve the subsequent conversion or disposition of the land involved without regard to other requirements of this chapter but subject to such terms and conditions as he determines equitable and appropriate with respect to the control of future use and the application or sharing of the proceeds or value realized upon sale or disposition. (Pub. L. 87-70, title VII, § 706, as added Pub. L. 89-117, title IX, § 906, Aug. 10, 1965, 79 Stat. 496, and amended Pub. L. 89-754, title VI, § 605(e), Nov. 3, 1966, 80 Stat. 1280; Pub. L. 90-19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91-609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783.)

AMENDMENTS

1970—Pub. L. 91-609 substituted provisions for acquisition of interests to guide urban development, for prior provisions for grants for urban beautification and improvement, now covered in section 1500a(a) of this title.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing.

1966—Pub. L. 89-754 struck out proviso which authorized the Administrator to use not to exceed $5,000,000 of the sum authorized for contracts under this section for the purpose of entering into contracts to make grants in amounts not to exceed 90 per centum of the cost of activities which he determined had special value in developing and demonstrating new and improved methods and materials for use in carrying out the purposes of this section, now covered by section 1500d(c) of this title.

§ 1500c-3. Labor standards.

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of grants under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary shall not approve any such grant without first obtaining adequate assurance that these labor standards will be maintained upon the construction work.

(b) The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a) of this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267, and section 276c of Title 40.

(Pub. L. 87–70, title VII, § 707, as added Pub. L. 89–117, title IX, § 907, Aug. 10, 1965, 79 Stat. 496, and amended Pub. L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1783.)

AMENDMENTS

1970—Pub. L. 91–609 reenacted provisions without change.

1967—Subsec. (a). Pub. L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

§ 1500d. Authorization of appropriations.

There are authorized to be appropriated for purposes of making grants under this chapter not to exceed $660,000,000 prior to September 30, 1972, plus not to exceed $63,000,000 for the fiscal year beginning July 1, 1973. Any amounts appropriated under this section shall remain available until expended. (As amended Pub. L. 92–213, § 8(b), Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–335, § 5, July 1, 1972, 86 Stat. 405; Pub. L. 93–117, § 7, Oct. 2, 1973, 87 Stat. 422.)

AMENDMENTS

1973—Pub. L. 93–117 authorized appropriation of $63,000,000 for fiscal year beginning July 1, 1973.

1972—Pub. L. 92–335 substituted "September 30, 1972" for "July 1, 1972".

1971—Pub. L. 92–213 substituted "$660,000,000" for "$560,000,000".

ADMINISTRATIVE PRIORITY FOR APPLICATIONS RELATING TO ACTIVITIES IN AREAS AFFECTED BY BASE CLOSINGS

State or unit of local government or agency thereof affected by reduction in level of expenditure or employment at Department of Defense installation located in or near such State or unit of local government, priority in processing applications for assistance under this section, see section 1453a of this title.

§ 1500d–1. Definitions.

As used in this chapter—

(1) The term "open-space land" means any land located in an urban area which has value for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic, architectural, or scenic purposes.

(2) The term "urban area" means any area which is urban in character, including those surrounding areas which, in the judgment of the Secretary, form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(3) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States.

(4) The term "local public body" means any public body (including a political subdivision) created by or under the laws of a State or two or more States, or a combination of such bodies, and includes Indian tribes, bands, groups, and nations (including Alaska Indians, Aleuts, and Eskimos) of the United States.

(5) The term "open-space uses" means any use of open-space land for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic, architectural or scenic purposes. (Pub. L. 87–70, title VII, § 709, as added Pub. L. 89–754, title VI, § 605(g), Nov. 3, 1966, 80 Stat. 1280, and amended Pub. L. 91–609, title IV, § 401, Dec 31, 1970, 84 Stat. 1783.)

AMENDMENTS

1970—Pub. L. 91–609 substituted provisions respecting definitions (formerly covered in former section 1500e of this title) for provisions relating to grants for historic preservation, now covered in section 1500a(a) of this title.

42. Outdoor Recreation Program

Ex. Order 11237, 30 Fed. Reg. 9433

(See Ex. Order 11237 under title III *Executive Orders*)

43. Pesticide Research

33 U.S.C. 1155l

(See also Pesticides under title V *Fish Resources, Preservation*)

§ 1155. Research, investigations, experiments, demonstrations, and studies.

* * * * *

(*l*) Release to States of scientific knowledge of effects from presence of pesticides in water for adoption of standards; pesticide release control study for implementation of standards; report to Congress.

(1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than two years after April 3, 1970, develop and issue to the States for the purpose of adopting standards pursuant to section 1160(c) of this title the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

(2) For the purpose of assuring effective implementation of standards adopted pursuant to paragraph (1) the President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct a study and investigation of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The President shall submit a report on such investigation to Congress together with his recommendations for any necessary legislation within two years after April 3, 1970.

44. Prescribing Regulations for Coordinating Planning and the Acquisition of Land Under the Outdoor Recreation Program, etc.

Ex. Order 11237

(See Ex. Order 11237 under title III *Executive Orders*)

45. Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities

Ex. Ord. 11762, 38 Fed. Reg. 34793

(See Ex. Order 11752 under title III *Executive Orders*)

46. Prohibition, Branding and Tolerances for Pesticide Regulation

21 U.S.C. 301–392

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* * * * *

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* * * * *

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 601, 607, 620, 679, 1033, 1049, 1052 of this title; title 16 section 778e; title 26 section 4817.

SUBCHAPTER I.—SHORT TITLE

§ 301. Short title.

This chapter may be cited as the Federal Food, Drug, and Cosmetic Act. (June 25, 1938, ch. 675, § 1, 52 Stat. 1040.)

EFFECTIVE DATE; POSTPONEMENT IN CERTAIN CASES

Sections 342(c), 343(e) (1), (g)—(k), 351(a) (4), 352(b), (d)—(h), 361(e) and 362(b) of this title effective Jan. 1, 1940 and sections 343(e) (1), (g)—(k), 352(b), (d)—(h) and 362(b) of this title effective July 1, 1940 as provided by regulations for certain lithographed labeling and containers bearing certain labeling, see act June 23, 1939, ch. 242, §§ 1, 2, 53 Stat. 853, set out as a note under section 392 of this title.

EFFECTIVE DATE

Effective date of this chapter, see section 902(a) of act June 25, 1938, set out as a note under section 392 of this title.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter, see Pub. L. 86-613, § 17, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

SUBCHAPTER II.—DEFINITIONS

§ 321. Definitions; generally.

For the purposes of this chapter—

* * * * *

(c) The term "Department" means the Department of Health, Education, and Welfare.

(d) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(e) The term "person" includes individual, partnership, corporation, and association.

(f) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

* * * * *

(h) The term "device" (except when used in paragraph (n) of this section and in sections 301 (i), 403(f), 502(c), and 602(c)) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not

dependent upon being metabolized for the achievement of any of its principal intended purposes.

* * * * *

(k) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(l) The term "immediate container" does not include package liners.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(n) If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.

* * * * *

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(r) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(s) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case as a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include—

(1) a pesticide chemical in or on a raw agricultural commodity; or

(2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(3) a color additive; or

(4) any substance used in accordance with a sanction or approval granted prior to September 6, 1958, pursuant to this chapter, the Poultry Products Inspection Act (21 U.S.C. 451 and the following) or the Meat Inspection Act of March 4, 1907, as amended and extended; or

(5) a new animal drug.

* * * * *

(u) The term "safe" as used in paragraph (s) of this section and in sections 348, 360b, and 376 of this title, has reference to the health of man or animal.

(v) Repealed. Pub. L. 91–513, title II, § 701(a), Oct. 27, 1970, 84 Stat. 1281.

* * * * *

(x) The term "animal feed", as used in paragraph (w) of this section, in section 360b of this title, and in provisions of this chapter referring to such paragraph or section, means an article which is intended for use for food for animals other than man and which is intended for use as a substantial source of nutrients in the diet of the animal, and is not limited to a mixture intended to be the sole ration of the animal. (June 25, 1938, ch. 675, § 201, 52 Stat. 1041; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; July 22, 1954, ch. 559, § 1, 68 Stat. 511; Sept. 6, 1958, Pub. L. 85–929, § 2, 72 Stat. 1784; July 12, 1960, Pub. L. 86–618, title I, § 101, 74 Stat. 397; Oct. 10, 1962, Pub. L. 87–781, title I, § 102(a), title III, § 307(a), 76 Stat. 781, 796; July 15, 1965, Pub. L. 89–74, §§ 3(a), 9(b), 79 Stat. 227, 234; July 13, 1968, Pub. L. 90–399, § 102, 82 Stat. 351; Oct. 24, 1968, Pub. L. 90–639, §§ 1, 4(a), 82 Stat. 1361, 1362; Oct. 27, 1970, Pub. L. 91–513, title II, § 701(a), (g), 84 Stat. 1281, 1282; Pub. L. 94–278, title V, § 502(a)(2)(A), Apr. 22, 1976, 90 Stat. 411; Pub. L. 94–295, § 3(a)(1)(A), May 28, 1976, 90 Stat. 575.)

REFERENCES IN TEXT

The Food and Drugs Act of June 30, 1906, as amended, act June 30, 1906, ch. 3915, 34 Stat. 768, as amended, referred to in subsecs. (p)(1) and (w)(1), was repealed by section 902(a) of act June 25, 1938 (set out as a note under section 392 of this title), and is covered by this chapter.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (q), is classified to section 135 et seq. of Title 7, Agriculture.

The Poultry Products Inspection Act, referred to in subsec. (s)(4) is classified to chapter 10 of this title.

The Meat Inspection Act of Mar. 4, 1907, referred to in subsec. (s)(4) is now the Federal Meat Inspection Act, and is set out in section 601 et seq. of this title.

AMENDMENTS

1976—Subsec. (h). Pub. L. 94–295 substantially revised subsec. (h).

Subsec. (n). Pub. L. 94–278 added "or advertising" after "labeling" wherever the latter appeared.

1970—Subsec. (a)(2). Pub. L. 91–513, § 701(g), struck out reference to sections 321, 331(i), 331(p), 331(q), 332, 333, 334, 337, 360, 360a, 372, 373, 374, and 375 of this title as they apply to depressant or stimulant drugs.

Subsec. (v). Pub. L. 91–513, § 701(a), struck out subsec. (v) which defined "depressant or stimulant drug".

1968—Subsec. (a)(2). Pub. L. 90–639, § 4(a), added material extending provisions covering depressant and stimulant drugs, the containers thereof, and equipment used in manufacturing, compounding, or processing such drugs, to the Canal Zone.

Subsec. (p). Pub. L. 90–399, § 102 (a), (b), inserted "(except a new animal drug or an animal feed bearing or containing a new animal drug)" following "Any drug" in subpars. (1) and (2), respectively.

Subsec. (s). Pub. L. 90–399, § 102(c), added subpar. (5).

Subsec. (u). Pub. L. 90–399, § 102(d), inserted a reference to section 360b of this title.

Subsec. (v)(3). Pub. L. 90–639, § 1, added specific reference to lysergic acid diethylamide.

Subsecs. (w), (x). Pub. L. 90–399, § 102(e), added subsecs. (w) and (x).

1965—Subsec. (g). Pub. L. 89–74, § 9(b), designated existing provisions as subpar. (1), redesignated clauses (1)—(4) thereof as (A)—(D), substituted therein "(A), (B), or (C)" for "(1), (2), or (3)" and added subpar. (2).

Subsec. (v). Pub. L. 89–74, § 3(a), added subsec. (v).

1962—Subsec. (a). Pub. L. 87–781, § 307(a), designated existing provisions as clause (2), inserted "Commonwealth of Puerto Rico and the" therein, and added clause (1).

Subsec. (p)(1). Pub. L. 87–781, § 102(a)(1), inserted "and effectiveness" following "to evaluate the safety", and "and effective" following "as safe."

Subsec. (p)(2). Pub. L. 87–781, § 102(a)(2), inserted "and effectiveness" following "safety."

1960—Subsec. (s). Pub. L. 86–618, § 101(a), excluded color additives from the definition of the term "food additive."

Subsec. (t). Pub. L. 86–618, § 101(c), added subsec. (t). Former subsec. (t) redesignated (u).

Subsec. (u). Pub. L. 86–618, § 101(b), redesignated former subsec. (t) as (u) and included therein a reference to section 376 of this title.

1958—Subsecs. (s) and (t). Pub. L. 85–929 added subsecs. (s) and (t).

1954—Subsecs. (q) and (r). Act July 22, 1954, added subsecs. (q) and (r).

§ 321a. Same; butter.

For the purposes of this chapter "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of milk fat, all tolerances having been allowed for. (Mar. 4, 1923, ch. 268, 42 Stat. 1500; June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059.)

§ 321b. Same; package.

The word "package" where it occurs in this chapter shall include and shall be construed to include wrapped meats inclosed in papers or other materials as prepared by the manufacturers thereof for sale. (July 24, 1919, ch. 26, 41 Stat. 271; June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059.)

§ 321c. Same; nonfat dry milk; milk.

For the purposes of this chapter, nonfat dry milk is the product resulting from the removal of fat and water from milk, and contains the lactose, milk proteins, and milk minerals in the same relative proportions as in the fresh milk from which made. It contains not over 5 per centum by weight of moisture. The fat content is not over 1½ per centum by weight unless otherwise indicated.

The term "milk", when used herein, means sweet milk of cows. (Mar. 2, 1944, ch. 77, 58 Stat. 108: July 2, 1956, ch. 495, 70 Stat. 486.)

SUBCHAPTER III.—PROHIBITED ACTS AND PENALTIES

§ 331. Prohibited acts.

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 344 or 355 of this title.

(e) The refusal to permit access to or copying of any record as required by section 373 of this title; or the failure to establish or maintain any record, or make any report, required under section 355 (i) or (j), 357 (d) or (g), 360b, (j), (*l*), or (m), 360e (f), or 360i of this title, or the refusal to permit access to or verification or copying of any such required record.

(f) The refusal to permit entry or inspection as authorized by section 374 of this title.

(g) The manufacture within any Territory of any food, drug, device, or cosmetic that is adulterated or misbranded.

(h) The giving of a guaranty or undertaking referred to in section 333 (c) (2) of this title which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in section 333 (c) (3) of this title which guaranty or undertaking is false.

(i) (1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of sections 344, 356, 357, or 376 of this title.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing

upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

(3) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

(j) The using by any person to his own advantage, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of sections 344, 348, 355, 356, 357, 360, 360b, 360c, 360d, 360e, 360f, 360h, 360i, 360j, 374, 376, or 379 of this title concerning any method or process which as a trade secret is entitled to protection.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.

(*l*) The using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under section 355, 360e, or 360j(g), as the case may be of this title, or that such drug or device complies with the provisions of such section.

(m) The sale or offering for sale of colored oleomargarine or colored margarine, or the possession or serving of colored oleomargarine or colored margarine in violation of subsections (b) or (c) of section 347 of this title.

(n) The using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with section 374 of this title.

(*o*) In the case of a prescription drug distributed or offered for sale in interstate commerce, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable State law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved by the Secretary. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(p) The failure to register in accordance with section 360 of this title, the failure to provide any information required by section 360(j) or 360k of this title, or the failure to provide a notice required by section 360(j)(2) of this title.

(q)(1) The failure or refusal to (A) comply with any requirement prescribed under section 360h or 360j (g), or (B) furnish any notification or other material or information required by or under section 360l or 360j(g).

(2) With respect to any device, the submission of any report that is required by or under this Act that is false or misleading in any material respect.

(r) The movement of a device in violation of an order under section 334(g) or the removal or alteration of any mark or label required by the order to identify the device as detained. (As amended Aug. 16, 1972. Pub. L. 92–387, § 4(e), 86 Stat. 562; Pub. L. 94–295, §§ 3(b), 4(b)(1), 7(b), May 28, 1976, 90 Stat. 576, 580, 582.)

AMENDMENTS

1976—Subsec. (q). Pub. L. 94–295, § 3(b), added Subsec. (q).

Subsec. (r). Pub. L. 94–295, § 7(b), added Subsec. (r).

1972—Subsec. (p). Pub. L. 92–387 added failure to provide information required by section 360(j) of this title, and failure to provide notice required by section 360(j)(2) of this title as prohibited acts.

1970—Subsec. (q). Pub. L. 91–513 struck out subsec. (q) which set out penalties for illegal manufacture, sale, disposition, possession and other traffic in stimulant and depressant drugs. See section 801 et seq. of this title.

1968—Subsec. (e). Pub. L. 90–399, § 103(1), inserted reference to section 360b (j), (*l*), and (m) of this title.

Subsec. (j). Pub. L. 90–399, § 103(2), inserted reference to section 360b of this title.

Subsec. (q). Pub. L. 90–639 divided clause (3), which had formerly referred simply to possession in violation of section 360a(c) of this title, into parts (A) and (B) which refer, respectively, to possession in violation of section 360a(c)(1) of this title and possession in violation of section 360a(c)(2) of this title.

1965—Subsec. (i) Pub L. 89–74, § 9(c), designated existing provisions as subpar. (1) and added subpars. (2) and (3).

1962—Subsec. (e). Pub. L. 87–781, §§ 103(c), 106(c), prohibited the failure to establish or maintain any record, or make any report, required under sections 355 (i) or (j) and 507 (d) or (g) of this title, or the refusal to permit access to, or verification or copying of, any such required record.

Subsec. (*l*). Pub. L. 87–781, § 104(e)(1), inserted "approval of" preceding "an application", and substituted "in effect" for "effective."

Subsec. (*o*). Pub. L. 87–781, § 114(a), added subsec. (*o*).

Subsec. (p). Pub. L. 87–781, § 304, added subsec. (p).

1960—Subsec. (i). Pub. L. 86–618, § 105(a), eliminated references to sections 346(b) and 364 of this title and inserted a reference to section 376 of this title.

Subsec. (j). Pub. L. 86–618, § 104, inserted a reference to section 376 of this title.

1958—Subsec. (j). Pub. L. 85–929, inserted "348" following "344".

1953—Subsec. (n). Act Aug. 7, 1953, added subsec. (n).

1950—Subsec. (m). Act Mar. 16, 1950, added subsec. (m).

1948—Subsec. (k). Act June 24, 1948, inserted "(whether or not the first sale)" so as to make it clear that this subsection is not limited to the case where the act occurs while the article is held for the first sale after interstate shipment, and extended coverage of subsection to acts which result in adulteration.

1947—Subsec. (j). Act Mar. 10, 1947, inserted "356, 357" following "344, 355".

1945—Subsec. (i). Act July 6, 1945, inserted "357" following "356".

1941—Subsec. (i). Act Dec. 22, 1941, inserted reference to section 356.

§ 332. Injunction proceedings.

(a) Jurisdiction of courts.

The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown, and subject to the provisions of section 381 (relating to notice to opposite party) of Title 28, to restrain violations of section 331 of this title, except paragraphs (h)—(j) of said section.

(b) Violation of injunction.

In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this chapter, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of section 387 of Title 28. (June 25, 1938, ch. 675, § 302, 52 Stat. 1043; Oct. 10, 1962, Pub. L. 87–781, title I, § 103(d), title II, § 201(c), 76 Stat. 784, 793.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–781 eliminated references to subsecs. (e) and (f) of section 331 of this title.

§ 333. Penalties.

(a) Violation of section 331 of this title.

Any person who violates a provision of section 331 of this title shall be imprisoned for not more than one year or fined not more than $1,000, or both.

(b) Second offenses; intent to defraud or mislead.

Notwithstanding the provisions of subsection (a) of this section, if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than $10,000, or both.

(c) Exceptions in certain cases of good faith, etc.

No person shall be subject to the penalties of subsection (a) of this section, (1) for having received in interstate commerce any article and delivered it or proffered delivery of it, if such delivery or proffer was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary the name and address of the person from whom he purchased or received such article and copies of all documents, if any there be, pertaining to the delivery of the article to him; or (2) for having violated section 331 (a) or (d) of this title, if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect, in case of an alleged violation of section 331(a) of this title, that such article is not adulterated or misbranded, within the meaning of this chapter designating this chapter or to the effect, in case of an alleged violation of section 331(d) of this title, that such article is not an article which may not, under the provisions of section 344 or 355 of this title, be introduced into interstate commerce; or (3) for having violated section 331(a) of this title, where the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated by the Secretary under this chapter, if such person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that such color additive was from a batch certified in accordance with the applicable regulations promulgated by the Secretary under this chapter; or (4) for having violated section 331 (b), (c) or (k) of this title by failure to comply with section 352(f) of this title in respect to an article received in interstate commerce to which neither section 353(a) nor 353 (b)(1) of this title is applicable, if the delivery or proffered delivery was made in good faith and the labeling at the time thereof contained the same directions for use and warning statements as were contained in the labeling at the time of such receipt of such article; or (5) for having violated section 331(i)(2) of this title if such person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug being a counterfeit drug, or for having violated section 331(i)(3) of this title if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(d) No person shall be subject to the penalties of subsection (a) of this section for a violation of section 331 involving misbranded food if the violation exists solely because the food is misbranded under section 343 because of its advertising, and no person shall be subject to the penalties of subsection (b) of this section for such a violation unless the violation is committed with the intent to defraud or mislead. (June 25, 1938, ch. 675, § 303, 52 Stat. 1043; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; Oct. 26, 1951, ch. 578, § 2, 65 Stat. 649; 1953 Reorg. Plan No. 1, § 5, eff. April 11, 1953, 18 F.R. 2053, 67 Stat. 631; July 12, 1960, Pub. L. 86–618, title I, § 105(b), 74 Stat. 403; July 15, 1965, Pub. L. 89–74, §§ 7, 9(d), 79 Stat. 233, 235; Oct. 24, 1968, Pub. L. 90–639, § 3, 82 Stat. 1361; Oct. 27, 1970, Pub. L. 91–513, title II, § 701(b), 84 Stat. 1281; Pub. L. 94–278, title V, § 502(a)(2)(B), Apr. 22, 1976, 90 Stat. 411.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–278 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–513 struck out reference to subsec. (b) of this section and transferred to subsec. (b) provisions covering second offenses and offenses committed with intent to defraud or mislead.

Subsec. (b). Pub. L. 91–513 inserted provisions covering second offenses and offenses committed with intent to defraud or mislead formerly set out in subsec. (a) and struck out provisions covering violations involving depressant and stimulant drugs. See, now, section 801 et seq. of this title.

1968—Subsecs. (a), (b). Pub. L. 90–639 made a general revision in the penalties prescribed for offenses involving depressant or stimulant drugs, set a fine of not to exceed $10,000 or imprisonment of not more than 5 years for offenses involving the unlawful manufacturing of, sale, or disposal of, or possession with intent to sell, a depressant or stimulant drug or involving counterfeit depressant or stimulant drugs, stiffened the penalties for unlawful sales or other disposals by persons over 18 to persons under 21, and set new penalties for possession of a depressant or stimulant drug for purposes other than sale or other disposal.

1965—Subsec. (a). Pub. L. 89–74, § 7(a), added the proviso limiting the penalties for depressant or stimulant drug violations to two years imprisonment or $5,000 fine or both for first offense and to two years imprisonment or $15,000 fine or both for subsequent offenses.

Subsec. (b). Pub. L. 89–74, § 7(b), inserted the parenthetical exception provision.

Subsec. (c). Pub. L. 89–74, § 9(d), added cl. (5).

1960—Subsec. (c). Pub. L. 86–618 substituted in cl. (3), "a color additive" for "a coal-tar color", "the color additive" for "the coal-tar color" and "such color additive was" for "such color was."

1951—Subsec. (c)(4). Act Oct. 26, 1951, added subsec. (c)(4).

§ 334. Seizure.

(a) Grounds and jurisdiction.

(1) Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 344 or 355 of this title, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found: *Provided, however,* That no libel for condemnation shall be instituted under this chapter, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this chapter based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this chapter, or (B) when the Secretary has probable cause to believe from facts found, without hearing, by him or any officer of employee of the Department that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which they are found: (A) Any drug that is a counterfeit drug, (B) Any container of a counterfeit drug, (C) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs, and (D) Any adulterated or misbranded device.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any food which—

(i) is misbranded under section 403(a)(2) because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the food.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a food described in subparagraph (A) if—

(i)(I) the food's advertising which resulted in the food being misbranded under section 343 was disseminated in the establishment in which the food is being held for sale to the ultimate consumer.

(II) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(III) all or part of the cost of such advertising was paid by such owner or operator; and

(ii) the owner or operator of such establishment used such advertising in the establishment to promote the sale of the food.

(b) Procedure; multiplicity of pending proceedings.

The article, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof

to the other courts having jurisdiction of the cases covered thereby.

(c) Availability of samples of seized goods prior to trial.

The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

(d) Disposition of goods after decree of condemnation; claims for remission or mitigation of forfeitures.

(1) Any food, drug, device, or cosmetic condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such article shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided,* That after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or Territory in which sold, the court may by order direct that such article be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter under the supervision of an officer or employee duly designated by the Secretary, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond. If the article was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the article was imported, and (B) that he had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the article to be delivered to the owner for exploration in lieu of destruction upon a showing by the owner that all of the conditions of section 381(d) of this title can and will be met: *Provided, however,* That the provisions of this sentence shall not apply where condemnation is based upon violation of section 342(a) (1), (2), or (6), section 351(a)(3), section 352(j), or section 361 (a) or (d) of this title: *And provided further,* That where such exportation is made to the original foreign supplier, then clauses (1) and (2) of section 381(d) of this title and the foregoing proviso shall not be applicable; and in all cases of exportation the bond shall be conditioned that the article shall not be sold or disposed of until the applicable conditions of section 381(d) of this title have been met. Any article condemned by reason of its being an article which may not, under section 344 or 355 of this title, be introduced into interstate commerce, shall be disposed of by destruction.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a) of this section.

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a) of this section, the condemnation of any equipment or thing (other than a drug) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (i) that he has not committed or caused to be committed any prohibited act referred to in such paragraph (2) and has no interest in any drug referred to therein, (ii) that he has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by him in good faith, and (iii) that he at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to counterfeit drugs.

(e) Costs.

When a decree of condemnation is entered against the article, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

(f) Removal of case for trial.

In the case of removal for trial of any case as provided by subsection (a) or (b) of this section—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(g)(1) If during an inspection conducted under section 374 of a facility or a vehicle, a device which the officer or employee making the inspection has reason to believe is adulterated or misbranded is found in such facility or vehicle, such officer or employee may order the device detained (in accordance with regulations prescribed by the Secretary) for a reasonable period which may not exceed twenty days unless the Secretary determines that a period which may not exceed twenty days unless the Secretary determines that a period of detention greater than twenty days is required to institute an action under subsection (a) or section 1332, in which case he may authorize a detention period of not to exceed thirty days. Regulations of the Secretary prescribed under this paragraph shall require that before a device may be ordered detained under this paragraph the Secretary or an officer or employee designated by the Secretary approve such order. A detention order under this paragraph may require the labeling or marking of

a device during the period of its detention for the purpose of identifying the device as detained. Any person who would be entitled to claim a device if it were seized under subsection (a) may appeal to the Secretary a detention of such device under this paragraph. Within five days of the date an appeal of a detention is filed with the Secretary, the Secretary shall after affording opportuntiy for an informal hearing by order confirm the detention or revoke it.

(2)(A) Except as authorized for subparagraph (B), a device subject to a detention order issued under paragraph (1) shall not be moved by any person from the place at which it is ordered detained until—

(i) released by the Secretary, or

(ii) the expiration of the detention period applicable to such order,

whichever occurs first.

(B) A device subject to a detention order under paragraph (1) may be moved—

(i) in accordance with regulations prescribed by the Secretary, and

(ii) if not in final form for shipment, at the discretion of the manufacturer of the device for the purpose of completing the work required to put it in such form.

(June 25, 1938, ch. 675, § 304, 52 Stat. 1044; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; June 24, 1948, ch. 613, § 2, 62 Stat. 582; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631; Aug. 7, 1953, ch. 350, § 3, 67 Stat. 477; Aug. 31, 1957, Pub. L. 85–250, 71 Stat. 567; July 15, 1965, Pub. L. 89–74, § 6, 79 Stat. 232; Oct. 24, 1968, Pub. L. 90–639, § 4(b), 82 Stat. 1362; Oct. 27, 1970, Pub. L. 91–513, title II, § 701 (c), **(d), 84 Stat. 1281, 1282; Pub. L. 94–278, title V, § 502(a)(2)(C), Apr. 22, 1976, 90 Stat. 411; Pub. L. 94–295, §§ 3(c), 7, May 28, 1976, 90 Stat. 576.)**

AMENDMENTS

1976—Subsec. (a)(2)(D). Pub. L. 94–295 added clause (D).

Subsec. (a)(3). Pub. L. 94–278 added paragraph (3).

Subsec. (g). Pub. L. 94–295 added subsec. (g).

1970—Subsec. (a)(2). Pub. L. 91–513, § 701(c), struck out cls. (A) and (D) which dealt with depressant or stimulant drugs, struck out reference to depressant or stimulant drugs in cl. (C), and redesignated cls. (B), (C), and (E) as cls. (A), (B), and (C), respectively.

Subsec. (d)(3)(iii). Pub. L. 91–513, § 701(d), struck out reference to depressant or stimulant drugs.

1968—Subsec. (a). Pub. L. 90–639 inserted references to the United States courts of Territories.

1965—Subsec. (a). Pub. L. 89–74, § 6(a), designated existing provisions as par. (1), redesignated clauses (1) and (2) of the proviso thereto as (A) and (B) and added par. (2).

Subsec. (b). Pub. L. 89–74, § 6(b)(1), inserted in the first sentence "equipment, or other thing proceeded against" following "article".

Subsec. (d). Pub. L. 89–74, § 6(b)(2), designated existing provisions as par. (1) redesignated clauses (1) and (2) of the second sentence thereof as (A) and (B), and added pars. (2) and (3).

1957—Subsec. (d). Pub. L. 85–250 permitted, under certain circumstances, reexportation of articles condemned at places other than original port of entry.

1953—Subsec. (c). Act Aug. 7, 1953, provided that a true copy of the analysis in any case shall be furnished the owner.

1948—Subsec. (a). Act June 24, 1948, inserted "or while held for sale (whether or not the first sale) after shipment in interstate commerce" to make this subsection coextensive with section 331 (k) of this title.

§ 335. Hearing before report of criminal violation.

Before any violation of this chapter is reported by the Secretary to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. (June 25, 1938, ch. 675, § 305, 52 Stat. 1045; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

§ 336. Report of minor violations.

Nothing in this chapter shall be construed as requiring the Secretary to report for prosecution, or for the institution of libel or injunction proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice or warning. (June 25, 1938, ch. 675, § 306, 52 Stat. 1045; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

§ 337. Proceedings in name of United States; provision as to subpoenas.

All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any such proceeding. (June 25, 1938, ch. 675, § 307, 52 Stat. 1046; Sept. 3, 1954, ch. 1263, § 37, 68 Stat. 1239.)

AMENDMENTS

1954—Act Sept. 3, 1954, eliminated reference to former section 654 of Title 28 which has been repealed.

SUBCHAPTER IV.—FOOD

§ 341 Definitions and standards for food.

Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container: *Provided*, That no definition and standard of identity and no standard of quality shall be established for fresh or dried fruits, fresh or dried vegetables, or butter, except that definitions and standards of identity may be established for avocadoes, cantaloupes, citrus fruits, and melons. In prescribing any standard of fill of container, the Secretary shall give due consideration to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material. In the prescrib-

ing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. Any definition and standard of identity prescribed by the Secretary for avocadoes, cantaloupes, citrus fruits, or melons shall relate only to maturity and to the effects of freezing. (June 25, 1938, ch. 675, § 401, 52 Stat. 1046; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631; Apr. 15, 1954, ch. 143, § 1, 68 Stat. 54; Aug. 1, 1956, ch. 861, § 1, 70 Stat. 919.)

AMENDMENTS

1956—Act Aug. 1, 1956, designated provisions constituting subsec. (a) as entire section and repealed subsec. (b), which provided the procedure for establishment of regulations and is now covered by section 371 (e) of this title.

§ 342. Adulterated food.

A food shall be deemed to be adulterated—

(a) Poisonous, insanitary, etc., ingredients.

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) (A) if it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; (iii) a color additive; or (iv) a new animal drug) which is unsafe within the meaning of section 346 of this title, or (B) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 346a(a) of this title, or (C) if it is, or if it bears or contains, any food additive which is unsafe within the meaning of section 348 of this title: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 346a of this title and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of sections 346 and 348 of this title, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity, or (D) if it is, or it bears or contains, a new animal drug (or conversion product thereof) which is unsafe within the meaning of section 360b of this title; (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 348 of this title.

(b) Absence, substitution, or addition of constituents.

(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

* * * * *

(June 25, 1938, ch. 675, § 402, 52 Stat. 1046; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; Mar. 16, 1950, ch. 61, § 3 (d), 64 Stat. 20; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631; July 22, 1954, ch. 559, § 2, 68 Stat. 511; July 9, 1956, ch. 530, 70 Stat. 512; Sept. 6, 1958, Pub. L. 85–929, § 3 (a), (b), 72 Stat. 1784; Mar. 17, 1959, Pub. L. 86–2, 73 Stat. 3; July 12, 1960, Pub. L. 86–618, title I, §§ 102 (a) (1), (2), 105 (c), 74 Stat. 397, 404; June 29, 1966, Pub. L. 89–477, 80 Stat. 231; July 13, 1968, Pub. L. 90–399, § 104, 82 Stat. 352.)

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90–399 added item (iv) in cl. (A) and cl. (D), respectively.

1966—Subsec. (d). Pub. L. 89–477 permitted the imbedding of nonnutritive objects in confectionery foods if in the judgment of the Secretary of Health, Education, and Welfare, as provided by regulation, the imbedding of the object is of practical functional value to the confectionery product and would not render it injurious or hazardous to health, raised to one-half of 1 per centum by volume the upper limit for the allowable use of alcohol derived solely from the use of flavoring extracts, allowed the use of safe nonnutritive substances in and on confectionery foods by reason of their use for some practical and functional purpose in the manfuacture, packaging, or storage of the confectionery foods if the use of the substances does not promote deception of the consumer or otherwise result in adulteration or misbranding, authorized the Secretary to issue regulations on the use of particular nonnutritive substances, and removed reference to nonnutritive masticatory substances added to chewing gum and harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 per centum, natural gum, authorized coloring, and pectin.

1960—Subsec. (a). Pub. L. 86–618, § 102(a)(1), substituted "other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive" for "(except a pesticide chemical in or on a raw agricultural commodity and except a food additive)" in cl. (2)(A).

Subsec. (c). Pub. L. 86–618, § 102(a)(2), amended subsection (c) generally by substituting provisions deem-

ing a food adulterated if it is, or it bears or contains, a color additive which is unsafe within the meaning of section 376 of this title for provisions which related to food that bears or contains a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 346 of this title, and eliminated provisos which related to the use of color on oranges.

Subsec. (d). Pub. L. 86-618, § 105(c), substituted "authorized coloring" for "harmless coloring."

1959—Subsec. (c). Pub. L. 86-2 extended from March 1, 1959 to May 1, 1959, the period during which subsection is inapplicable to oranges which have been colored with F. D. & C. Red 32, and inserted proviso requiring Secretary to establish regulations prescribing the conditions under which Citrus Red No. 2 may be safely used in coloring certain mature oranges, and providing for separately listing and for certification of batches of such color.

§ 343. Misbranded food.

A food shall be deemed to be misbranded—

(a) False or misleading label.

If (1) its labeling is false or misleading in any particular, or (2) in the case of a food to which section 350 applies, its advertising is false or misleading in a material respect or its labeling is in violation of section 350(b)(2).

(b) Offer for sale under another name.

If it is offered for sale under the name of another food.

(c) Imitation of another food.

If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) Misleading container.

If its container is so made, formed, or filled as to be misleading.

(e) Package form.

If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

(f) Prominence of information on label.

If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) Representation as to definition and standard of identity.

If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 341 of this title, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) Representation as to standards of quality and fill of container.

If it purports to be or is represented as—

(1) a food for which a standard of quality has been prescribed by regulations as provided by section 341, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 341 of this title, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) Label where no representation as to definition and standard of identity.

If it is not subject to the provisions of subsection (g) of this section unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (2) of this subsection is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary.

(j) Representation for special dietary use.

If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.

(k) Artificial flavoring, artificial coloring, or chemical preservatives.

If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the Secretary. The provisions of this subsection and subsections (g) and (i) of this section with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream. The provisions of this subsection with respect to chemical preservatives shall not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.

(l) Pesticide chemicals on raw agricultural commodities.

If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical: *Provided, however,* That no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.

* * * * *

(n) Packaging or labeling of drugs in violation of regulations.

If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of Title 15. (June 25, 1938, ch. 675, § 403, 52 Stat. 1047; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; June 29, 1960, Pub. L. 86-537, § 1, 74 Stat. 251; July 12, 1960, Pub. L. 86-618, title I, § 102(a)(3), 74 Stat. 398; Dec. 30, 1970, Pub. L. 91-601, § 7(c), 84 Stat. 1763; Pub. L. 94-278, title V, § 502(a)(1), Apr. 22, 1976, 90 Stat. 411.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-278 added clause (2).

1970—Subsec. (n). Pub. L. 91-601 added subsec. (n).

1960—Subsec. (k). Pub. L. 86-537, § 1(1), exempted pesticide chemicals when used in or on a raw agricultural commodity which is the produce of the soil.

Subsec. (*l*). Pub. L. 86-537, § 1(2), added subsec. (*l*).

Subsec. (m). Pub. L. 86-618 added subsec. (m).

§ 344. Emergency permit control.

(a) Conditions on manufacturing, processing, etc., as health measure.

Whenever the Secretary finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into interstate commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Secretary as provided by such regulations.

(b) Violation of permit; suspension and reinstatement.

The Secretary is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Secretary shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

(c) Inspection of permit-holding establishments.

Any officer or employee duly designated by the Secretary shall have access to any factory or establishment, the operator of which holds a permit from the Secretary, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (June 25, 1938, ch. 675, § 404, 52 Stat. 1048; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

§ 345. Regulations making exemptions.

The Secretary shall promulgate regulations exempting from any labeling requirement of this chapter (1) small open containers of fresh fruits and fresh vegetables and (2) food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment. (June 25, 1938, ch. 675, § 405, 52 Stat. 1049; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

§ 346. Tolerances for poisonous or deleterious substances in food; regulations.

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2)(A) of section 342(a) of this title; but when such substance is so required or cannot be so avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extend as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2)(A) of section 342(a) of this title. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be

considered to be adulterated within the meaning of clause (1) of section 342(a) of this title. In determining the quantity of such added substance to be tolerated in or on different articles of food the Secretary shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (June 25, 1938, ch. 675, § 406, 52 Stat. 1049; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 6, 1958, Pub. L. 85-929, § 3(c), 72 Stat. 1785; July 12, 1960, Pub. L. 86-618, title I, § 103(a)(1), 74 Stat. 398.)

AMENDMENTS

1960—Pub. L. 86-618 repealed former subsec. (b), which required the Secretary to promulgate regulations for the listing of coal-tar colors.

1958—Subsec. (a). Pub. L. 85-929 substituted "clause (2)(A)" for "clause (2)" in first sentence.

§ 346a. Tolerances for pesticide chemicals in or on raw agricultural commodities.

(a) Conditions of safety.

Any poisonous or deleterious pesticide chemical, or any pesticide chemical which is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of clause (2) of section 342 (a) of this title unless—

(1) a tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by the Administrator of the Environmental Protection Agency under this section and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(2) with respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance by the Administrator under this section.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of section 342 (a) of this title.

(b) Establishment of tolerances.

The Administrator shall promulgate regulations establishing tolerances with respect to the use in or on raw agricultural commodities of poisonous or deleterious pesticide chemicals and of pesticide chemicals which are not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals, as safe for use, to the extent necessary to protect the public health. In establishing any such regulation, the Administrator shall give appropriate consideration, among other relevant factors, (1) to the necessity for the production of an adequate, wholesome, and economical food supply; (2) to the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (3) to the opinion submitted with a certification of usefulness under subsection (*l*) of this section. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section. In carrying out the provisions of this section relating to the establishment of tolerances, the Administrator may establish the tolerance applicable with respect to the use of any pesticide chemical in or on way raw agricultural commodity at zero level if the scientific data before the Administrator does not justify the establishment of a greater tolerance.

(c) Exemptions.

The Administrator shall promulgate regulations exempting any pesticide chemical from the necessity of a tolerance with respect to use in or on any or all raw agricultural commodities when such a tolerance is not necessary to protect the public health. Such regulations shall be promulgated in the manner prescribed in subsection (d) or (e) of this section.

(d) Regulations pursuant to petition; publication of notice; time for issuance; referral to advisory committees; effective date; hearings.

(1) Any person who has registered, or who has submitted an application for the registration of, a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Administrator a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of, such pesticide, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing—

(A) the name, chemical identity, and composition of the pesticide chemical;

(B) the amount, frequency, and time of application of the pesticide chemical;

(C) full reports of investigations made with respect to the safety of the pesticide chemical;

(D) the results of tests on the amount of residue remaining, including a description of the analytical methods used;

(E) practicable methods for removing residue which exceeds any proposed tolerance;

(F) proposed tolerances for the pesticide chemical if tolerances are proposed; and

(G) reasonable grounds in support of the petition.

Samples of the pesticide chemical shall be furnished to the Administrator upon request. Notice of the filing of such petition shall be published in general terms by the Administrator within thirty days after filing. Such notice shall include the analytical methods available for the determination of the residue of the pesticide chemical for which a tolerance or exemption is proposed.

(2) Within ninety days after a certification of usefulness under subsection (*l*) of this section with respect to the pesticide chemical named in the petition, the Administrator shall, after giving due con-

sideration to the data submitted in the petition or otherwise before him, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful, or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes,

unless within such ninety-day period the person filing the petition requests that the petition be referred to an advisory committee or the Administrator within such period otherwise deems such referral necessary, in either of which events the provisions of paragraph (3) of this subsection shall apply in lieu hereof.

(3) In the event that the person filing the petition requests, within ninety days after a certification of usefulness under subsection (*l*) of this section with respect to the pesticide chemical named in the petition, that the petition be referred to an advisory committee, or in the event the Administrator within such period otherwise deems such referral necessary, the Administrator shall forthwith submit the petition and other data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Administrator and other data before it, certify to the Administrator a report and recommendations on the proposal in the petition to the Administrator, together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Administrator shall, after giving due consideration to all data then before him, including such report, recommendations, underlying data, and statement, by order make public a regulation—

(A) establishing a tolerance for the pesticide chemical named in the petition for the purposes for which it is so certified as useful; or

(B) exempting the pesticide chemical from the necessity of a tolerance for such purposes.

(4) The regulations published under paragraph (2) or (3) of this subsection will be effective upon publication.

(5) Within thirty days after publication, any person adversely affected by a regulation published pursuant to paragraph (2) or (3) of this subsection, or pursuant to subsection (e) of this section, may file objections thereto with the Administrator, specifying with particularity the provisions of the regulation deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. A copy of the objections filed by a person other than the petitioner shall be served on the petitioner, if the regulation was issued pursuant to a petition. The petitioner shall have two weeks to make a written reply to the objections. The Administrator shall thereupon, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 1006 (c) of Title 5. The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Administrator, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Administrator shall act upon such objections and by order make public a regulation. Such regulation shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reasons certified to the Administrator by an advisory committee, and shall set forth detailed findings of fact upon which the regulation is based. No such order shall take effect prior to the ninetieth day after its publication, unless the Administrator finds that emergency conditions exist necessitating an earlier effective date, in which event the Administrator shall specify in the order his findings as to such conditions.

(e) Regulations pursuant to Administrator's proposals.

The Administrator may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Administrator may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person who has registered, or who has submitted an application for the registration of, a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Administrator shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the date submitted to it by the Administrator and other data before it, certify to the Administrator a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Administrator may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the

necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) of subsection (d) of this section.

(f) Data submitted as confidential.

All data submitted to the Administrator or to an advisory committee in support of a petition under this section shall be considered confidential by the Administrator and by such advisory committee until publication of a regulation under paragraph (2) or (3) of subsection (d) of this section. Until such publication, such data shall not be revealed to any person other than those authorized by the Administrator or by an advisory committee in the carrying out of their official duties under this section.

(g) Advisory committees; appointment; composition; compensation; clerical assistance.

Whenever the referral of a petition or proposal to an advisory committee is requested under this section, or the Administrator otherwise deems such referral necessary the Administrator shall forthwith appoint a committee of competent experts to review the petition or proposal and to make a report and recommendations thereon. Each such advisory committee shall be composed of experts, qualified in the subject matter of the petition and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Administrator. Members of an advisory committee shall receive compensation and travel expenses in accordance with section 376(b)(5)(D) of this title. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Administrator shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(h) Right of consultation.

A person who has filed a petition or who has requested the referral of a proposal to an advisory committee in accordance with the provisions of this section, as well as representatives of the Environmental Protection Agency, shall have the right to consult with any advisory committee provided for in subsection (g) of this section in connection with the petition or proposal.

(i) Judicial review.

(1) In a case of actual controversy as to the validity of any order under subsections (d) (5), (e), or (*l*) of this section any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part.

(2) In the case of a petition with respect to an order under subsection (d) (5) or (e) of this section, a copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title. 28. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Administrator with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee.

(3) In the case of a petition with respect to an order under subsection (*l*) of this section, a copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Administrator with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Administrator may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The courts shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

(j) Temporary tolerances.

The Administrator may, upon the request of any person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act or upon his own initiative, establish a temporary tolerance for the pesticide chemical for the uses covered by the permit whenever in his judgment such action is deemed necessary to protect the public health, or may temporarily exempt such pesticide chemical from a tolerance. In establishing such a tolerance, the Administrator shall give due regard to the necessity for ex-

perimental work in developing an adequate, wholesome, and economical food supply and to the limited hazard to the public health involved in such work when conducted in accordance with applicable regulations under the Federal Insecticide, Fungicide, and Rodenticide Act.

(k) Regulations based on public hearings before January 1, 1953.

Regulations affecting pesticide chemicals in or on raw agricultural commodities which are promulgated under the authority of section 346 (a) of this title upon the basis of public hearings instituted before January 1, 1953, in accordance with section 371 (a) of this title, shall be deemed to be regulations under this section and shall be subject to amendment or repeal as provided in subsection (m) of this section.

(*l*) Pesticides under Federal Insecticide, Fungicide, and Rodenticide Act; functions of Administrator of the Environmental Protection Agency; certifications; hearing; time limitation; opinion; regulations.

The Administrator, upon request of any person who has registered, or who has submitted an application for the registration of, a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d)(1) of this section with respect to a pesticide chemical which constitutes, or is an ingredient of, such pesticide, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Administrator deems it necessary to postpone action for such period, on the basis of data before him, either—

(1) certify that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Administrator takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Administrator to certify on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Administrator may by order make the certification as proposed. In the event that the action described in clause (A) or (C) is taken, the Administrator shall by order make the certification as proposed with respect to such parts thereof as are requested. It[1] the event a hearing is requested, the Administrator shall provide opportunity for a prompt hearing. The certification of the Administrator as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Administrator exceed one hundred and sixty days. The Administrator shall submit with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Administrator, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.

(m) Amendment of regulations.

The Administrator shall prescribe by regulations the procedure by which regulations under this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of regulations establishing tolerances, including the appointment of advisory committees and the procedure for referring petitions to such committees.

(n) Guaranties.

The provisions of section 333 (c) of this title with respect to the furnishing of guaranties shall be applicable to raw agricultural commodities covered by this section.

(*o*) Payment of fees; services or functions as conditioned on; waiver or refund of fees.

The Administrator shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Administrator, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Administrator's functions under this section. Under such regulations, the performance of the Administrator's services or other functions pursuant to this section, including any one or more of the following, may be conditioned upon the payment of such fees: (1) The acceptance of filing of a petition submitted under subsection (d) of this section; (2) the promulgation of a regulation establishing a tolerance, or an exemption from the necessity of a tolerance, under this section, or the amendment or repeal of such a regulation; (3) the referral of a petition or proposal under this section to an advisory committee; (4) the acceptance for filing of objections under subsection (d) (5) of this section; or (5) the certification and filing in court of a transcript of the proceedings and the record under subsection (i) (2) of this section. Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Administrator such waiver or refund is equitable and not contrary to the purposes of this subsection.

(As amended Nov. 18, 1971, Pub. L. 92–157, title III, § 303(a), 85 Stat. 464; Oct. 21, 1972, Pub. L. 92–516, § 3(3), 86 Stat. 998.)

AMENDMENTS

1972—Subsecs. (d)(1), (e), (*l*). Pub. L. 92-516 sub-

[1] So in original. Probably should read "In."

stituted references to pesticide for references to economic poison wherever appearing therein.

1971—Subsec. (g). Pub. L. 92–157 struck out ", which the Secretary shall by rules and regulations prescribe," appearing following "as compensation for their services a reasonable per diem" prior to amendment in 1970, by Pub. L. 91–515, which overlooked such language when amending subsec. (g) as provided in 1970 Amendment note.

1970—Subsec. (g). Pub. L. 91–515 substituted provisions authorizing members of an advisory committee to receive compensation and travel expenses in accordance with section 376(b)(5)(D) of this title, for provisions authorizing such members to receive as compensation a reasonable per diem for time actually spent on committee work, and necessary traveling and subsistence expenses while serving away from their places of residence.

1958—Subsec. (i)(2). Pub. L. 85–791, § 20(a), in first sentence, substituted "transmitted by the clerk of the court to the Secretary, or" for "served upon the Secretary, or upon", substituted "file in the court the record of the proceedings" for "certify and file in the court a transcript of the proceedings and the record", and inserted "as provided in section 2112 of Title 28", and which, in second sentence, substituted "the filing of such petition" for "such filing".

Subsec. (i)(3). Pub. L. 85–791, § 20(b), in first sentence, substituted "transmitted by the clerk of the court to the Secretary of Agriculture, or" for "served upon the Secretary of Agriculture, or upon", substituted "file in the court the record of the proceedings" for "certify and file in the court a transcript of the proceedings and the record", and inserted "as provided in section 2112 of Title 28", and, in second sentence, substituted "the filing of such petition" for "such filing".

§ 346b. Same; appropriations.

There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose and administration of sections 321 (q), (r), 342 (a) (2), and 346a of this title. (July 22, 1954, ch. 559, § 4, 68 Stat. 517.)

* * * * *

SUBCHAPTER VII.—GENERAL ADMINISTRATIVE PROVISIONS

§ 371. Regulations and hearings.

(a) Authority to promulgate regulations.

The authority to promulgate regulations for the efficient enforcement of this chapter, except as otherwise provided in this section, is vested in the Secretary.

(b) Regulations for imports and exports.

The Secretary of the Treasury and the Secretary of Health, Education, and Welfare shall jointly prescribe regulations for the efficient enforcement of the provisions of section 381 of this title, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Secretary of Health, Education, and Welfare shall determine.

(c) Conduct of hearings.

Hearings authorized or required by this chapter shall be conducted by the Secretary of Health, Education, and Welfare or such officer or employee as he may designate for the purpose.

(d) Effectiveness of definitions and standards of identity.

The definitions and standards of identity promulgated in accordance with the provisions of this chapter shall be effective for the purposes of the enforcement of this chapter, notwithstanding such definitions and standards as may be contained in other laws of the United States and regulations promulgated thereunder.

(e) Procedure for establishment.

(1) Any action for the issuance, amendment, or repeal of any regulation under section 341, 343(j), 344(a), 346, 351(b), or 352 (d) or (h) of this title shall be begun by a proposal made (A) by the Secretary on his own initiative, or (B) by petition of any interested person, showing reasonable grounds therefor, filed with the Secretary. The Secretary shall publish such proposal and shall afford all interested persons an opportunity to present their views thereon, orally or in writing. As soon as practicable thereafter, the Secretary shall by order act upon such proposal and shall make such order public. Except as provided in paragraph (2) of this subsection, the order shall become effective at such time as may be specified therein, but not prior to the day following the last day on which objections may be filed under such paragraph.

(2) On or before the thirtieth day after the date on which an order entered under paragraph (1) of this subsection is made public, any person who will be adversely affected by such order if placed in effect may file objections thereto with the Secretary, specifying with particularity the provisions of the order deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. Until final action upon such objections is taken by the Secretary under paragraph (3) of this subsection, the filing of such objections shall operate to stay the effectiveness of those provisions of the order to which the objections are made. As soon as practicable after the time for filing objections has expired the Secretary shall publish a notice in the Federal Register specifying those parts of the order which have been stayed by the filing of objections and, if no objections have been filed, stating that fact.

(3) As soon as practicable after such request for a public hearing, the Secretary, after due notice, shall hold such a public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. At the hearing, any interested person may be heard in person or by representative. As soon as practicable after completion of the hearing, the Secretary shall by order act upon such objections and make such order public. Such order shall be based only on substantial evidence of record at such hearing and shall set forth, as part of the order, detailed findings of fact on which the order is based. The Secretary shall specify in the order the date on which it shall take effect, except that it shall not be made to take effect prior to the ninetieth day after its publication unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

(f) Review of order.

(1) In a case of actual controversy as to the validity of any order under subsection (e) of this section, any person who will be adversely affected by such order if placed in effect may at any time prior to the ninetieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of Title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Secretary refuses to issue, amend, or repeal a regulation and such order is not in accordance with law the court shall by its judgment order the Secretary to take action, with respect to such regulation, in accordance with law. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28.

(5) Any action instituted under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(g) Copies of records of hearings.

A certified copy of the transcript of the record and proceedings under subsection (e) of this section shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, libel for condemnation, exclusion of imports, or other proceeding arising under or in respect to this chapter, irrespective of whether proceedings with respect to the order have previously been instituted or become final under subsection (f) of this section. (June 25, 1938, ch. 675, § 701, 52 Stat. 1055; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; June 25, 1948, ch. 646, § 32, 62 Stat. 991; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631; Apr. 15, 1954, ch. 143, § 2, 68 Stat. 55; Aug. 1, 1956, ch. 861, § 2, 70 Stat. 919; Aug. 28, 1958, Pub. L. 85–791, § 21, 72 Stat. 948; July 12, 1960, Pub. L. 86–618, title I, § 103(a)(4), 74 Stat. 398.)

AMENDMENTS

1960—Subsec. (e). Pub. L. 86-618 substituted "section 341, 343(j), 344(a), 346, 351(b), or 352(d) or (h), of this title" for "section 341, 343(j), 344(a), 346(a) or (b), 351(b), 352 (d) or (h), 354 or 364 of this title."

1958—Subsec. (f) (1). Pub. L. 85–791, § 21 (a), substituted provisions requiring transmission of a copy of the petition by clerk to Secretary, and filing of the record by Secretary, for provisions which permitted service of summons and petition any place in United States and required Secretary to certify and file transcript of the proceedings and record upon service.

Subsec. (f) (3). Pub. L. 85–791, § 21 (b), inserted "Upon the filing of the petition referred to in paragraph (1) of this subsection".

1956—Subsec. (e). Act Aug. 1, 1956, simplified the procedures governing the prescribing of regulations under certain provisions of this chapter.

1954—Subsec. (e). Act Apr. 15, 1954, struck out the reference to section 341 of this title, preceding "343 (j)", such section 341 now containing its own provisions with respect to hearings regarding the establishment of food standards.

§ 372. Examinations and investigations.

(a) Authority to conduct.

The Secretary is authorized to conduct examinations and investigations for the purposes of this chapter through officers and employees of the Department or through any health, food, or drug officer or employee of any State, Territory, or political subdivision thereof, duly commissioned by the Secretary as an officer of the Department. In the case of food packed in the Commonwealth of Puerto Rico or a Territory the Secretary shall attempt to make inspection of such food at the first point of entry within the United States when, in his opinion and with due regard to the enforcement of all the provisions of this chapter, the facilities at his disposal will permit of such inspection. For the purposes of this subsection the term "United States" means the States and the District of Columbia.

(b) Availability to owner of part of analysis samples.

Where a sample of a food, drug, or cosmetic is collected for analysis under this chapter the Secretary shall, upon request, provide a part of such official sample for examination or analysis by any person named on the label of the article, or the owner thereof, or his attorney or agent; except that the Secretary is authorized, by regulations, to make such reasonable exceptions from, and impose such reasonable terms and conditions relating to, the operation of this subsection as he finds necessary for the proper administration of the provisions of this chapter.

(c) Records of other departments and agencies.

For purposes of enforcement of this chapter, rec-

ords of any department or independent establishment in the executive branch of the Government shall be open to inspection by any official of the Department duly authorized by the Secretary to make such inspection.

* * * * *

(June 25, 1938, ch. 675, § 702, 52 Stat. 1056; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 10, 1962, Pub. L. 87–781, title III, §§ 307(b), 308, 76 Stat. 796; July 15, 1965, Pub. L. 89–74, § 8(a), 79 Stat. 234; Oct. 27, 1970, Pub. L. 91–513, title II, § 701(f), 84 Stat. 1282.)

AMENDMENTS

1970—Subsec. (e). Pub. L. 91–513 struck out reference to depressant or stimulant drugs.

1965—Subsec. (e). Pub. L. 89–74 added subsec. (e).

1962—Subsec. (a). Pub. L. 87–781, § 307(b), inserted "the Commonwealth of Puerto Rico or" preceding "a Territory the Secretary."

Subsec. (d). Pub. L. 87–781, § 308, added subsec. (d).

§ 372a. Examination of sea food on request of packer; marking food with results; fees; penalties.

The Secretary of Health, Education, and Welfare, upon application of any packer of any sea food for shipment or sale within the jurisdiction of this chapter, may, at his discretion, designate inspectors to examine and inspect such food and the production, packing, and labeling thereof. If on such examination and inspection compliance is found with the provisions of this chapter and regulations promulgated thereunder, the applicant shall be authorized or required to mark the food as provided by regulation to show such compliance. Services under this section shall be rendered only upon payment by the applicant of fees fixed by regulation in such amounts as may be necessary to provide, equip, and maintain an adequate and efficient inspection service. Receipts from such fees shall be covered into the Treasury and shall be available to the Secretary of Health, Education, and Welfare for expenditures incurred in carrying out the purposes of this section, including expenditures for salaries of additional inspectors when necessary to supplement the number of inspectors for whose salaries Congress has appropriated. The Secretary is authorized to promulgate regulations governing the sanitary and other conditions under which the service herein provided shall be granted and maintained, and for otherwise carrying out the purposes of this section. Any person who forges, counterfeits, simulates, or falsely represents, or without proper authority uses any mark, stamp, tag, label, or other identification devices authorized or required by the provisions of this section or regulations thereunder, shall be guilty of a misdemeanor, and shall on conviction thereof be subject to imprisonment for not more than one year or a fine of not less than $1,000 nor more than $5,000, or both such imprisonment and fine. (June 30, 1906, ch. 3915, § 10A, as added June 22, 1934, ch. 712, 48 Stat. 1204, and amended Aug. 27, 1935, ch. 739, 49 Stat. 871; June 25, 1938, ch. 675, § 902 (a), 52 Stat. 1059; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; renumbered § 702A of act June 25, 1938, ch. 675, 52 Stat. 1059 by act July 12, 1943, ch. 221, title II, § 1, 57 Stat. 500, and amended 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

§ 373. Records of interstate shipment.

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving food, drugs, devices, or cosmetics in interstate commerce or holding such articles so received, shall, upon the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any such record so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: *Provided*, That evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. (June 25, 1938, ch. 675, § 703, 52 Stat. 1057; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631; Oct. 15, 1970, Pub. L. 91–452, title II, § 230, 84 Stat. 930.)

AMENDMENTS

1970—Pub. L. 91–452 added ", or any evidence which is directly or indirectly derived from such evidence," following "under this section".

§ 374. Inspection.

(a) Right of agents to enter; scope of inspection; notice; promptness; exclusions.

For purposes of enforcement of this chapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held, for introduction into interstate commerce or after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in interstate commerce; and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials; containers, and labeling therein. In the case of any factory, warehouse, establishment, or consulting laboratory in

which prescription drugs or restricted devices are manufactured, processed, packed, or held, the inspection shall extend to all things therein (including records, files, papers, processes, controls, and facilities) bearing on whether prescription drugs or restricted devices which are adulterated or misbranded within the meaning of this chapter, or which may not be manufactured, introduced into interstate commerce, or sold, or offered for sale by reason of any provision of this chapter, have been or are being manufactured, processed, packed, transported, or held in any such place, or otherwise bearing on violation of this chapter. No inspection authorized by the preceding sentence shall extend to financial data, sales data other than shipment data, pricing data, personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Act), and research data (other than data relating to new drugs, antibiotic drugs, and devices and subject to reporting and inspection under regulations lawfully issued pursuant to section 355 (i) or (j), section 357 (d) or (g), section 360i, or 360j(g), and data relating to other drugs or devices which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 355(j)). A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. The provisions of the second sentence of this subsection shall not apply to—

Each such inspection shall be commenced and completed with reasonable promptness. The provisions of the second sentence of this subsection shall not apply to—

(1) pharmacies which maintain establishments in conformance with any applicable local laws regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs or devices upon prescriptions of practitioners licensed to administer such drugs or devices to patients under the care of such practitioners in the course of their professional practice, and which do not, either through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail;

(2) practitioners licensed by law to prescribe or administer drugs, or prescribe or use devices, as the case may be, and who manufacture, prepare, propagate, compound, or process drugs, or manufacture or process devices, solely for use in the course of their professional practice;

(3) persons who manufacture, prepare, propagate, compound, or process drugs or manufacture or process devices solely for use in research, teaching, or chemical analysis and not for sale;

(4) such other classes of persons as the Secretary may by regulation exempt from the application of this section upon a finding that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

(b) Written report to owner; copy to Secretary.

Upon completion of any such inspection of a factory, warehouse, consulting laboratory, or other establishment, and prior to leaving the premises, the officer or employee making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which, in his judgment, indicate that any food, drug, device, or cosmetic in such establishment (1) consists in whole or in part of any filthy, putrid, or decomposed substance, or (2) has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. A copy of such report shall be sent promptly to the Secretary.

(c) Receipt for samples taken.

If the officer or employee making any such inspection of a factory, warehouse, or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(d) Analysis of samples furnished owner.

Whenever in the course of any such inspection of a factory or other establishment where food is manufactured, processed, or packed, the officer or employee making the inspection obtains a sample of any such food, and an analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for food, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(e) Every person required under section 360i or 360j(g) to maintain records and every person who is in charge or custody of such records shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to, and to copy and verify, such records. (June 25, 1938, ch. 675, § 704, 52 Stat. 1057; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631; Aug. 7, 1953, ch. 350, § 1, 67 Stat. 476; Oct. 10, 1962, Pub. L. 87–781, title II, § 201 (a), (b), 76 stat. 792; Pub. L. 94–295, § 6, May 28, 1976, 90 Stat. 581.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–781, § 201(a), extended the inspection, where prescription drugs are manufactured, processed, packed, or held, to all things bearing on whether adulterated or misbranded drugs, or any which may not be manufactured, introduced in interstate commerce, or sold or offered for sale under any provision of this chapter, have been or are being manufactured, processed, packed, transported or held in any such place, or otherwise bearing on violation of this chapter, but ex-

cluded from such inspection, data concerning finance, sales, other than shipment, pricing, personnel, other than relating to new drugs subject to reporting, provided that the provisions of the second sentence of this subsection shall be inapplicable to pharmacies, practitioners and other persons enumerated in pars. (1)—(4), and eliminated "are held" preceding "after such introduction."

Subsec. (b). Pub. L. 87-781, § 201(b), inserted "consulting laboratory" following "warehouse."

1953—Act Aug. 7, 1953, designated existing provisions as subsec. (a) and amended them by substituting provisions permitting entry and inspection upon presentation of appropriate credentials and a written notice to the owner, operator, or agent in charge for provisions which authorized entry and inspection only after making a request and obtaining permission from the owner, operator, or custodian, and inserting provisions requiring a separate written notice for each inspection but not for each entry made during the period covered by the inspection, and directing that the inspection shall be conducted within reasonable limits, in a reasonable manner and completed with reasonable promptness, and added subsecs. (b)—(d).

§ 375. Publicity.

(a) Reports.

The Secretary shall cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) Information regarding certain goods.

The Secretary may also cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the Secretary, imminent danger to health or gross deception of the consumer. Nothing in this section shall be construed to prohibit the Secretary from collecting, reporting, and illustrating the results of the investigations of the Department. (June 25, 1938, ch. 675, § 705, 52 Stat. 1057; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F. R. 2422, 54 Stat. 1237; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

* * * * *

SUBCHAPTER VIII.—IMPORTS AND EXPORTS

§ 381. Imports and exports.

(a) Imports; list of registered foreign establishments; samples from unregistered foreign establishments; examination and refusal of admission.

The Secretary of the Treasury shall deliver to the Secretary of Health, Education, and Welfare, upon his request, samples of food, drugs, devices, and cosmetics which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health, Education, and Welfare and have the right to introduce testimony. The Secretary of Health, Education, and Welfare shall furnish to the Secretary of the Treasury a list of establishments registered pursuant to section 360(i) of this title and shall request that if any drugs or devices manufactured, prepared, propagated, compounded, or processed in an establishment not so registered are imported or offered for import into the United States, samples of such drugs or devices be delivered to the Secretary of Health, Education, and Welfare, with notice of such delivery to the owner or consignee, who may appear before the Secretary of Health, Education, and Welfare and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under insanitary conditions or, in the case of a device, the methods used in, or the facilities or controls used for, the manufacture, packing, storage, or installation of the device do not conform to the requirements of section 360j(f), or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated, misbranded, or in violation of section 355 of this title, then such article shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such article refused admission unless such article is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations. Clause (2) of the third sentence of this subsection shall not be construed to prohibit the admission of narcotic drugs the importation of which is permitted under the Controlled Substances Import and Export Act.

(b) Same; disposition of refused articles.

Pending decision as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of such article to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Secretary of Health, Education, and Welfare that an article included within the provisions of clause (3) of subsection (a) of this section can, by relabeling or other action, be brought into compliance with this chapter or rendered other than a food, drug, device, or cosmetic, final determination as to admission of such article may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary of Health, Education, and Welfare may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected articles or portions thereof, as may be specified in the Secretary's authorization). All such relabeling or other action pursuant to such authorization shall in accordance with regulations be under the supervision of an officer or employee of the Department of Health, Education, and Welfare designated by the Secretary of Health, Education, and Welfare, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) Same; charges concerning refused articles.

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction

provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any article refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(d) Exports.

(d) (1) A food, drug, device, or cosmetic intended for export shall not be deemed to be adulterated or misbranded under this Act if it—

(A) accords to the specifications of the foreign purchaser,

(B) is not in conflict with the laws of the country to which it is intended for export,

(C) is labeled on the outside of the shipping package that it is intended for export, and

(D) is not sold or offered for sale in domestic commerce.

This paragraph does not authorize the exportation of any new animal drug, or an animal feed bearing or containing a new animal drug, which is unsafe within the meaning of section 360b.

(2) Paragraph (1) does not apply to any device—

(A) which does not comply with an applicable requirement of section 360d or 360e,

(B) which under section 360j(g) is exempt from either such section, or

(C) which is a banned device under section 360f,

unless, in addition to the requirements of paragraph (1), the Secretary has determined that the exportation of the device is not contrary to public health and safety and has the approval of the country to which it is intended for export. (June 25, 1938, ch. 675, § 801, 52 Stat. 1058; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; Oct. 18, 1949, ch. 696, §§ 1—3, 63 Stat. 882; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 10, 1962, Pub. L. 87–781, title III, § 306, 76 Stat. 796; July 13, 1968, Pub. L. 90–399, § 106, 82 Stat. 353; Oct. 27, 1970, Pub. L. 91–513, title II, § 701(h), 84 Stat. 1282; Pub. 94–295, §§ 3(f), 4 (b) (3), May 28, 1976, 90 Stat. 578, 580.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–513 substituted "Clause (2) of the third sentence of this subsection" for "This subsection" and "the Controlled Substances Import and Export Act" for "section 173 of this title" in the provisions prohibiting a construction of subsec. (a) which might rule out the admission of narcotic drugs expressly permitted under the named statute.

1968—Subsec. (d). Pub. L. 90–399 provided that nothing in subsec. (d) shall authorize the exportation of any new animal drug, or an animal feed bearing or containing a new animal drug, which is unsafe within the meaning of section 360b of this title.

1962—Subsec. (a). Pub. L. 87–781 inserted provisions requiring the Secretary of Health, Education, and Welfare to furnish the Secretary of the Treasury a list of establishments registered under section 360(i) of this title, and to request that samples of any drugs from any establishments not so registered be delivered to the Secretary of Health, Education, and Welfare, with notice of delivery to the consignee who may appear before the Secretary to testify.

1949—Subsec. (a). Act Oct. 18, 1949, § 1, inserted at end of second sentence ", except as provided in subsection (b) of this section. The Secretary * * * to such regulations.".

Subsec. (b). Act Oct. 18, 1949, § 2, provided for express statutory authority for the long-standing administrative practice of releasing imported articles that do not comply with the requirements of the law so that they may be relabeled or given appropriate treatment to bring them into compliance.

Subsec. (c). Act Oct. 18, 1949, § 3, charged all costs, including salaries and travel and subsistence expenses of officers and employees, against importers.

SUBCHAPTER IX.—MISCELLANEOUS

§ 391. Separability clause.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (June 25, 1938, ch. 675, § 901, 52 Stat. 1059.)

§ 392. Exemption of meats and meat food products; laws unaffected.

(a) Meats and meat food products shall be exempt from the provisions of this chapter to the extent of the application or the extension thereto of the Meat Inspection Act, approved March 4, 1907, as amended.

(b) Nothing contained in this chapter shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of section 262 of Title 42 (relating to viruses, serums, toxins, and analogous products applicable to man); the virus, serum, toxin, and analogous products provisions, applicable to domestic animals, of the Act of Congress approved March 4, 1913; the Filled Cheese Act of June 6, 1896, the Filled Milk Act of March 4, 1923; or the Import Milk Act of February 15, 1927. (June 25, 1938, ch. 675, § 902 (b), (c), 52 Stat. 1059; July 13, 1968, Pub. L. 90–399, § 107, 82 Stat. 353.)

47. Protection and Enhancement of Environmental Quality

Ex. Order 11514, 35 F.R. 4247

(See Ex. Order 11514 under title III *Executive Orders*)

48. Research and Development in Nonnuclear Energy Sources

42 U.S.C. 5901–5915

Sec.

§ 5901. Congressional statement of findings.

The Congress hereby finds that—

(a) The Nation is suffering from a shortage of environmentally acceptable forms of energy .

(b) Compounding this energy shortage is our past

and present failure to formulate a comprehensive and aggressive research and development program designed to make available to American consumers our large domestic energy reserves including fossil fuels, nuclear fuels, geothermal resources, solar energy, and other forms of energy. This failure is partially because the unconventional energy technologies have not been judged to be economically competitive with traditional energy technologies.

(c) The urgency of the Nation's energy challenge will require commitments similar to those undertaken in the Manhattan and Apollo projects; it will require that the Nation undertake a research, development, and demonstration program in nonnuclear energy technologies with a total Federal investment which may reach or exceed $20,000,000,000 over the next decade.

(d) In undertaking such program, full advantage must be taken of the existing technical and managerial expertise in the various energy fields within Federal agencies and particularly in the private sector.

(e) The Nation's future energy needs can be met if a national commitment is made now to dedicate the necessary financial resources, to enlist our scientific and technological capabilities, and to accord the proper priority to developing new nonnuclear energy options to serve national needs, conserve vital resources, and protect the environment. (Pub. L. 93–577, § 2, Dec. 31, 1974, 88 Stat. 1879.)

SHORT TITLE

Section 1 of Pub. L. 93–577 provided that: "This Act [enacting this chapter] may be cited as the 'Federal Nonnuclear Energy Research and Development Act of 1974'."

§ 5902. Congressional declaration of policy and purpose; implementation and administration of program by Administrator of Energy Research and Development Administration.

It is the policy of the Congress to develop on an urgent basis the technological capabilities to support the broadest range of energy policy options through conservation and use of domestic resources by socially and environmentally acceptable means.

(b) (1) The Congress declares the purpose of this chapter to be to establish and vigorously conduct a comprehensive, national program of basic and applied research and development, including but not limited to demonstrations of practical applications, of all potentially beneficial energy sources and utilization technologies, within the Energy Research and Development Administration.

(2) In carrying out this program, the Administrator of the Energy Research and Development Administration (hereinafter in this chapter referred to as the "Administrator") shall be governed by the terms of this Act and other applicable provisions of law with respect to all nonnuclear aspects of the research, development, and demonstration program; and the policies and provisions of the Atomic Energy Act of 1954, and other provisions of law shall continue to apply to the nuclear research, development, and demonstration program.

(3) In implementing and conducting the research, development, and demonstration programs pursuant to this chapter the Administrator shall incorporate programs in specific nonnuclear technologies previously enacted into law, including those established by the Solar Heating and Cooling Act of 1974, the Geothermal Energy Research, Development, and Demonstration Act of 1974, and the Solar Energy Research, Development, and Demonstration Act of 1974. (Pub. L. 93–577, § 3, Dec. 31, 1974, 88 Stat. 1879.)

§ 5903. Duties and functions of Administrator.

The Administrator shall—

(a) review the current status of nonnuclear energy resources and current nonnuclear energy research and development activities, including research and development being conducted by Federal and non-Federal entities;

(b) formulate and carry out a comprehensive Federal nonnuclear energy research, development, and demonstration program which will expeditiously advance the policies established by this chapter and other relevant legislation establishing programs in specific energy technologies;

(c) utilize the funds authorized pursuant to this chapter to advance energy research and development by initiating and maintaining, through fund transfers, grants, or contracts, energy research, development and demonstration programs or activities utilizing the facilities, capabilities, expertise, and experience of Federal agencies, national laboratories, universities, nonprofit organizations, industrial entities, and other non-Federal entities which are appropriate to each type of research, development, and demonstration activity;

(d) establish procedures for periodic consultation with representatives of science, industry, environmental organizations, consumers, and other groups who have special expertise in the areas of energy research, development, and technology; and

(e) initiate programs to design, construct, and operate energy facilities of sufficient size to demonstrate the technical and economic feasibility of utilizing various forms of nonnuclear energy.

(Pub. L. 93–577, § 4, Dec. 31, 1974, 88 Stat. 1880.)

§ 5904. Research, development, and demonstration program governing principles.

(a) The Congress authorizes and directs that the comprehensive program in research, development, and demonstration required by this chapter shall be designed and executed according to the following principles:

(1) Energy conservation shall be a primary consideration in the design and implementation of the Federal nonnuclear energy program. For the purposes of this chapter, energy conservation means both improvement in efficiency of energy production and use, and reduction in energy waste.

(2) The environmental and social consequences of a proposed program shall be analyzed and con-

sidered in evaluating its potential.

(3) Any program for the development of a technology which may require significant consumptive use of water after the technology has reached the stage of commercial application shall include thorough consideration of the impacts of such technology and use on water resources pursuant to the provisions of section 5912 of this title.

(4) Heavy emphasis shall be given to those technologies which utilize renewable or essentially inexhaustible energy sources.

(5) The potential for production of net energy by the proposed technology at the stage of commercial application shall be analyzed and considered in evaluating proposals.

(b) The Congress further directs that the execution of the comprehensive research, development, and demonstration program shall conform to the following principles:

(1) Research and development of nonnuclear energy sources shall be pursued in such a way as to facilitate the commercial availability of adequate supplies of energy to all reigons of the United States.

(2) In determining the appropriateness of Federal involvement in any particular research and development undertaking, the Administrator shall give consideration to the extent to which the proposed undertaking satisfies criteria including, but not limited to. the following:

(A) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance.

(B) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results.

(C) The extent of the problems treated and the objectives sought by the undertaking are national or widespread in their significance.

(D) There are limited opportunities to induce non-Federal support of the undertaking through regulatory actions, end use controls, tax and price incentives, public education, or other alternatives to direct Federal financial assistance.

(E) The degree of risk of loss of investment inherent in the research is high, and the availability or risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technology.

(F) The magnitude of the investment appears to exceed the financial capabilities of potential non-Federal participants in the research to support effective efforts.

(Pub. L. 93–577, § 5, Dec. 31, 1974, 88 Stat. 1880.)

§ 5905. Comprehensive plan and implementing program for energy research, development, and demonstration; transmission to Congress; purposes; scope of program.

(a) Pursuant to the authority and directions of this chapter and the Energy Reorganization Act of 1974, the Administrator shall transmit to the Congress, on or before June 30, 1975, a comprehensive plan for energy research, development, and demonstration. This plan shall be appropriately revised annually as provided in section 5914(a) of this title. Such plan shall be designed to achieve—

(1) solutions to immediate and short-term (to the early 1980's) energy supply system and associated environmental problems;

(2) solutions to middle-term (the early 1980's to 2000) energy supply system and associated environmental problems; and

(3) solutions to long-term (beyond 2000) energy supply system and associated environmental problems.

(b)(1) Based on the comprehensive energy research, development, and demonstration plan developed under subsection (a) of this section, the Administrator shall develop and transmit to the Congress, on or before June 30, 1975, a comprehensive nonnuclear energy research, development, and demonstration program to implement the nonnuclear research, development, and demonstration aspects of the comprehensive plan.

(2) This program shall be designed to achieve solutions to the energy supply and associated environmental problems in the immediate and short-term (to the early 1980's), middle-term (the early 1980's to 2000), and long-term (beyond 2000) time intervals. In formulating the nonnuclear aspects of this program, the Administrator shall evaluate the economic, environmental, and technological merits of each aspect of the program.

(3) The Administrator shall assign program elements and activities in specific nonnuclear energy technologies, to the short-term, middle-term, and long-term time intervals, and shall present full and complete justification for these assignments and the degree of emphasis for each. These program elements and activities shall include, but not be limited to, research, development, and demonstrations designed—

(A) to advance energy conservation technologies, including but not limited to—

(i) productive use of waste, including garbage, sewage, agricultural wastes, and industrial waste heat;

(ii) reuse and recycling of materials and consumer products;

(iii) improvements in automobile design for increased efficiency and lowered emissions, including investigation of the full range of alternatives to the internal combustion engine and systems of efficient public transportation; and

(iv) advanced urban and architectural design to promote efficient energy use in the residential and commercial sectors, improvements in home design and insulation technologies, small thermal storage units and increased efficiency in electrical appliances and lighting fixtures;

(B) to accelerate the commercial demonstration of technologies for producing low-sulfur fuels suitable for boiler use;

(C) to demonstrate improved methods for the generation, storage, and transmission of electrical energy through (i) advances in gas turbine technologies, combined power cycles, the use of low British thermal unit gas and, if practicable, magnetohydrodynamics; (ii) storage systems to allow more efficient load following, including the use of inertial energy storage systems; and (iii) improvement in cryogenic transmission methods;

(D) to accelerate the commercial demonstration of technologies for producing substitutes for natural gas, including coal gasification: *Provided*, That the Administrator shall invite and consider proposals from potential participants based upon Federal assistance and participation in the form of a joint Federal-industry corporation, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(E) to accelerate the commercial demonstration of technologies for producing syncrude and liquid petroleum products from coal: *Provided*, That the Administrator shall invite and consider proposals from potential participants based upon Federal assistance and participation through guranteed prices or purchases of the products, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(F) in accordance with the program authorized by the Geothermal Energy Research, Development, and Demonstration Act of 1974, to accelerate the commercial demonstration of geothermal energy technologies;

(G) to demonstrate the production of syncrude from oil shale by all promising technologies including in situ technologies;

(H) to demonstrate new and improved methods for the extraction of petroleum resources, including secondary and tertiary recovery of crude oil;

(I) to demonstrate the economics and commercial viability of solar energy for residential and commercial energy supply applications in accordance with the program authorized by the Solar Heating and Cooling Act of 1974;

(J) to accelerate the commercial demonstration of environmental control systems for energy technologies developed pursuant to this chapter;

(K) to investigate the technical and economic feasibility of tidal power for supplying electrical energy;

(L) to commercially demonstrate advanced solar energy technologies in accordance with the Solar Research Development, and Demonstration Act of 1974;

(M) to determine the economics and commercial viability of the production of synthetic fuels such as hydrogen and methanol;

(N) to commercially demonstrate the use of fuel cells for central station electric power generation;

(O) to determine the economics and commercial viability of in situ coal gasification;

(P) to improve techniques for the management of existing energy systems by means of quality control; application of systems analysis, communications, and computer techniques; and public information with the objective of improving the reliability and efficiency of energy supplies and encourage the conservation of energy resources; and

(Q) to improve methods for the prevention and cleanup of marine oil spills.

(Pub. L. 93–577, § 6, Dec. 31, 1974, 88 Stat. 1881.)

§ 5906. Federal assistance and participation in programs.

(a) Forms of activities authorized.

In carrying out the objectives of this chapter, the Administrator may utilize various forms of Federal assistance and participation which may include but are not limited to—

(1) joint Federal-industry experimental, demonstration, or commercial corporations consistent with the provisions of subsection (b) of this section;

(2) contractual arrangements with non-Federal participants including corporations, consortia, universities, governmental entities and nonprofit institutions;

(3) contracts for the construction and operation of federally owned facilities;

(4) Federal purchases or guaranteed price of the products of demonstration plants or activities consistent with the provisions of subsection (c) of the section;

(5) Federal loans to non-Federal entities conducting demonstrations of new technologies; and

(6) incentives, including financial awards, to individual inventors, such incentives to be designed to encourage the participation of a large number of such inventors.

(b) Proposed joint Federal-industry corporations; operational guidelines; powers, duties, and functions; composition; scope of Federal assistance and participation; dissolution.

Joint Federal industry corporations proposed for congressional authorization pursuant to this chapter shall be subject to the provisions of section 5908 of this Title and shall conform to the following guidelines except as otherwise authorized by Congress:

(1) Each such corporation may design, construct, operate, and maintain one or more experimental, demonstration, or commercial-size facilities, or other operations which will ascertain the technical, environmental, and economic feasibility of a particular energy technology. In carrying out this function, the corporation shall be empowered either directly or by contract, to utilize commercially available technologies, perform tests, or design, construct, and operate pilot plants, as may be necessary for the design of the full-scale facility.

(2) Each corporation shall have—

(A) a Board of nine directors consisting of individuals who are citizens of the United States, of whom one shall be elected annually by the Board to serve as Chairman. The Board shall be empowered to adopt and amend bylaws. Five

members of the Board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and four members of the Board shall be appointed by the President on the basis of recommendations received by him from any non-Federal entity or entities entering into contractual arrangements to participate in the corporation;

(B) a President and such other officers and employees as may be named and appointed by the Board (with the rates of compensation of all officers and employees being fixed by the Board); and

(C) the usual powers conferred upon corporations by the laws of the District of Columbia.

(3) An appropriate time interval, not to exceed 12 years, shall be established for the term of Federal participation in the corporation, at the expiration of which the Board of Directors shall take such action as may be necessary to dissolve the corporation or otherwise terminate Federal participation and financial interests. In carrying out such dissolution, the Board of Directors shall dispose of all physical facilities of the corporation in such manner and subject to such terms and conditions as the Board determines are in the public interest and consistent with existing law; and a share of the appraised value of the corporate assets proportional to the Federal participation in the corporation, including the proceeds from the disposition of such facilities, on the date of its dissolution, after satisfaction of all its legal obligations, shall be made available to the United States and deposited in the Treasury of the United States as miscellaneous receipts. All patent rights of the corporation shall, on such date of dissolution, be vested in the Administrator: *Provided*, That Federal participation may be terminated prior to the time established in the authorizing Act upon recommendation of the Board of Directors.

(4) Any commercially valuable product produced by demonstration facilities shall be disposed of in such manner and under such terms and conditions as the corporation shall prescribe. All revenues received by the corporation from the sale of such products shall be available to the corporation for use by it in defraying expenses incurred in connection with carrying out its functions to which this chapter applies.

(5) The estimated Federal share of the construction, operation, and maintenance cost over the life of each corporation shall be determined in order to facilitate a single congressional authorization of the full amount at the time of establishment of the corporation.

(6) The Federal share of the cost of each such corporation shall reflect (A) the technical and economic risk of the venture, (B) the probability of any financial return to the non-Federal participants arising from the venture, (C) the financial capability of the potential non-Federal participants, and (D) such other factors as the Administrator may set forth in proposing the corporation: *Provided*, That in no instance shall the Federal share exceed 90 per centum of the cost.

(7) (A) Prior to the establishment of any joint Federal-industry corporation pursuant to this chapter, the Administrator shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate, and to the appropriate committees of the House of Representatives and the Senate a report setting forth in detail the consistency of the establishment of the corporation with the principles and directives set forth in section 5904 of this title and this section, and the proposed purpose and planned activities of the corporation.

(B) No such corporation shall be established unless previously authorized by specific legislation enacted by the Congress.

(c) Proposed competitive systems of price supports for demonstration facilities; guidelines.

Competitive systems of price supports proposed for congressional authorization pursuant to this chapter shall conform to the following guidelines:

(1) The Administrator shall determine the types and capacities of the desired full-scale, commercial-size facility or other operation which would demonstrate the technical, environmental, and economic feasibility of a particular nonnuclear energy technology.

(2) The Administrator may award planning grants for the purpose of financing a study of the full cycle economic and environmental costs associated with the demonstration facility selected pursuant to paragraph (1) of this subsection. Such planning grants may be awarded to Federal and non-Federal entities including, but not limited to, industrial entities, universities, and nonprofit organizations. Such planning grants may also be used by the grantee to prepare a detailed and comprehensive bid to construct the demonstration facility.

(3) Following the completion of the studies pursuant to the planning grants awarded under paragraph (2) of this subsection regarding each such potential price supported demonstration facility for which the Administrator intends to request congressional authorization, he shall invite bids from all interested parties to determine the minimum amount of Federal price support needed to construct the demonstration facility at the minimum. The Administrator may designate one or more competing entities, each to construct one commercial demonstration facility. Such designation shall be made on the basis of those entities, (A) commitment to construct the demonstration facility at he minimum level of Federal price supports, (B) detailed plan of environmental protection, and (C) proposed design and operation of the demonstration facility.

(4) The construction plans and actual construction of the demonstration facility, together with all related facilities, shall be monitored by the Environmental Protection Agency. If additional environmental requirements are imposed by the Administrator after the designation of the successful bidders and if such additional environmental

requirements result in additional costs, the Administrator is authorized to renegotiate the support price to cover such additional costs.

(5) The estimated amount of the Federal price over the life of such facility shall be determined by support for a demonstration facility's product the Administrator to facilitate a single congressional authorization of the full amount of such support at the time of the designation of the successful bidders.

(6) No price support program shall be implemented unless previously authorized by specific legislation enacted by the Congress.

(d) Support for joint university-industry research efforts.

Nothing in this section shall preclude Federal participation in, and support for, joint university-industry nonnuclear energy research efforts. (Pub. L. 93–577, § 7, Dec. 31, 1974, 88 Stat. 1883.)

§ 5907. Demonstration projects.

(a) Scope of authority of Administrator.

The Administrator is authorized to—

(1) identify opportunities to accelerate the commercial applications of new energy technologies, and provide Federal assistance for or participation in demonstration projects (including pilot plants demonstrating technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources); and

(2) enter into cooperative agreements with non-Federal entities to demonstrate the technical feasibility and economic potential of energy technologies on a prototype or full-scale basis.

(b) Criteria applicable in reviewing potential projects.

In reviewing potential projects, the Administrator shall consider criteria including but not limited to—

(1) the anticipated, research, development, and application objectives to be achieved by the activities or facilities proposed;

(2) the economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system;

(3) the relationship of the proposal to the criteria of priority set forth in section 5904(b)(2) of this title;

(4) the availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal;

(5) the total estimated cost including the Federal investment and the probable time schedule;

(6) the proposed participants and the proposed financial contributions of the Federal Government and of the non-Federal participants; and

(7) the proposed cooperative arrangement, agreements among the participants, and form of management of the activities.

(c) Federal and non-Federal share of costs.

(1) A financial award under this section may be made only to the extent of the Federal share of the estimated total design and construction costs, plus operation and maintenance costs.

(2) For the purposes of this chapter the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

(d) Submission of proposals to Administration; promulgation of regulations by Administrator establishing procedures; required contents of proposals and regulations.

(1) The Administrator shall, within six months of December 31, 1974, promulgate regulations establishing procedures for submission of proposals to the Energy Research and Development Administration for the purposes of this chapter. Such regulations shall establish a procedure for selection of proposals which—

(A) provides that projects will be carried out under such conditions and varying circumstances as will assist in solving energy extraction, transportation, conversion, conservation, and end-use problems of various areas and regions, under representative geological, geographic, and environmental conditions; and

(B) provides time schedules for submission of, and action on, proposal requests for the purposes of implementing the goals and objectives of this chapter.

(2) Such regulations also shall specify the types and form of the information, data, and support documentation that are to be contained in proposals for each form of Federal assistance or participation set forth in section 5906(a) of this title: *Provided*, That such proposals to the extent possible shall include, but not be limited to—

(A) specification of the technology;

(B) description of prior pilot plant operating experience with the technology;

(C) preliminary design of the demonstration plant;

(D) time tables containing proposed construction and operation plans;

(E) budget-type estimates of construction and operating costs;

(F) description and proof of title to land for proposed site, natural resources, electricity and water supply and logistical information related to access to raw materials to construct and operate the plant and to dispose of salable products produced from the plant;

(G) analysis of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(H) plans for commercial use of the technology if the demonstration is successful;

(I) plans for continued use of the plant if the demonstration is successful; and

(J) plans for dismantling of the plant if the

demonstration is unsuccessful or otherwise abandoned.

(3) The Administrator shall from time to time review and, as appropriate, modify and repromulgate regulations issued pursuant to this section.

(e) Amount of estimate of Federal investment requiring Congressional authorization for appropriation.

If the estimate of the Federal investment with respect to construction costs of any demonstration project proposed to be established under this section exceeds $50,000,000, no amount may be appropripriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

(f) Amount of estimated Federal contribution authorizing Administrator to proceed with negotiation of agreements and implementation of proposal; amount of Federal contribution requiring Administrator to submit report to Congress as prerequisite to expenditure of funds.

If the total estimated amount of the Federal contribution to the construction cost of a demonstration project does not exceed $50,000,000, the Administrator is authorized to proceed with the negotiation of agreements and implementation of the proposal subject to the availability of funds under the authorization of appropriations pursuant to section 5915 of this title: *Provided*, That if such Federal contribution to the construction cost is estimated to exceed $25,000,000 the Administrator shall provide a full and comprehensive report on the proposed demonstration project to the appropriate committees of the Congress and no funds may be expended for any agreement under the authority granted by this section prior to the expiration of sixty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the Administrator's report on the proposed project is received by the Congress. Such reports shall contain an analysis of the extent to which the proposed demonstration satisfies the criteria specified in subsection (b) of this section. (Pub. L. 93-577, § 8, Dec. 31, 1974, 88 Stat. 1886.)

§ 5908. Patents and inventions.

(a) Vesting of title to invention and issuance of patents to United States; prerequisites.

Whenever any invention is made or conceived in the course of or under any contract of the Administration, other than nuclear energy research, development, and demonstration pursuant to the Atomic Energy Act of 1954 and the Administrator determines that—

(1) the person who made the invention was employed or assigned to perform research, development, or demonstration work and the invention is related to the work he was employed or assigned to perform, or that it was within the scope of his employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(2) the person who made the invention was not employed or assigned to perform research, development, or demonstration work, but the invention is nevertheless related to the contract or to the work or duties he was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in clause (1).

title to such invention shall vest in the United States, and if patents on such invention are issued they shall be issued to the United States, unless in particular circumstances the Administrator waives all or any part of the rights of the United States to such invention in conformity with the provisions of this section.

(b) Contract as requiring report to Administration of invention, etc., made in course of contract.

Each contract entered into by the Administration with any person shall contain effective provisions under which such person shall furnish promptly to the Administration a written report containing full and complete technical information concerning any invention, discovery, improvement, or innovation which may be made in the course of or under such contract.

(c) Waiver by Administrator of rights of United States; regulations prescribing procedures; record of waiver determinations; objectives.

Under such regulations in conformity with the provisions of this section as the Administrator shall prescribe, the Administrator may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of the Administration if he determines that the interests of the United States and the general public will be best served by such waiver. The Administration shall maintain a publicly available, periodically updated record of waiver determinations. In making such determinations, the Administrator shall have the following objectives:

(1) Making the benefits of the energy research, development, and demonstration program widely available to the public in the shortest practicable time.

(2) Promoting the commercial utilization of such inventions.

(3) Encouraging participation by private persons in the Administration's energy research, development, and demonstration program.

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the anitrust laws.

(d) Considerations applicable at time of contracting for waiver determination by Administrator.

In determining whether a waiver to the contractor at the time of contracting will best serve the inter-

ests of the United States and the general public, the Administrator shall specifically include as considerations—

(1) the extent to which the participation of the contractor will expedite the attainment of the purposes of the program;

(2) the extent to which a waiver of all or any part of such rights in any or all fields of technology is needed to secure the participation of the particular contractor;

(3) the extent to which the contractor's commercial position may expedite utilization of the research, development, and demonstration program results;

(4) the extent to which the Government has contributed to the field of technology to be funded under the contract;

(5) the purpose and nature of the contract, including the intended use of the result developed thereunder;

(6) the extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the work to be performed under the contract;

(7) the extent to which the field of technology to be funded under the contract has been developed at the contractor's private expense;

(8) the extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort;

(9) the extent to which the contract objectives are concerned with the public health, public safety, or public welfare;

(10) the likely effect of the waiver on competition and market concentration; and

(11) in the case of a nonprofit educational institution, the extent to which such institution has a technology transfer capability and program, approved by the Administrator as being consistent with the applicable policies of this section.

(e) Considerations applicable to identified invention for waiver determination by Administrator.

In determining whether a waiver to the contractor or inventor or rights to an identified invention will best serve the interests of the United States and the general public, the Administrator shall specifically include as considerations paragraphs (4) through (11) of subsection (d) of this section as applied to the invention and—

(1) the extent to which such waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention; and

(2) the extent to which the plans, intentions, and ability of the contractor or inventor will obtain expeditious commercialization of such invention.

(f) Rights subject to reservation where title to invention vested in United States.

Whenever title to an invention is vested in the United States, there may be reserved to the contractor or inventor—

(1) a revocable or irrevocable nonexclusive, paid-up license for the practice of the invention throughout the world; and

(2) the rights to such invention in any foreign country where the United States has elected not to secure patent rights and the contractor elects to do so, subject to the rights set forth in paragraphs (2), (3), (6), and (7) of subsection (h) of this section: *Provided*, That when specifically requested by the Administration and three years after issuance of such a patent, the contractor shall submit the report specified in subsection (h)(1) of this section.

(g) Licenses to inventions; promulgation of regulations specifying terms and conditions; criteria and procedures for grant of exclusive or partially exclusive licenses; record of determinations.

(1) Subject to paragraph (2) of this subsection, the Administrator shall determine and promulgate regulations specifying the terms and conditions upon which licenses may be granted in any invention to which title is vested in the United.

(2) Pursuant to paragraph (1) of this subsection, the Administrator may grant exclusive or partially exclusive licenses in any invention only if, after notice and opportunity for hearing, it is determined that—

(A) the interests of the United States and the general public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to the point of practical or commercial applications;

(B) the desired practical or commercial applications have not been achieved, or are not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth risk capital and expenses to bring the invention to the point of practical or commercial applications; and

(D) the proposed terms and scope of exclusivity are not substantially greater than necessary to provide the incentive for bringing the invention to the point of practical or commercial applications and to permit the licensee to recoup its costs and a reasonable profit thereon:

Provided, That, the Administrator shall not grant such exclusive or partially exclusive license if he determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the county in any line of commerce to which the technology to be licensed relates. The Administration shall maintain a publicly available, periodically updated record of determinations to grant such licenses.

(h) Required terms and conditions in waiver of rights or grant of exclusive or partially exclusive licenses.

Each waiver of rights or grant of an exclusive or partially exclusive license shall contain such terms and conditions as the Administrator may determine to be appropriate for the protection of the interests

of the United States and the general public, including provisions for the following:

(1) Periodic written reports at reasonable intervals, and when specifically requested by the Administration, on the commercial use that is being made or is intended to be made of the invention.

(2) At least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the United States (including any Government agency) and States and domestic municipal governments, unless the Administrator determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(3) The right in the United States to sublicense any foreign government pursuant to any existing or future treaty of agreement if the Administrator determines it would be in the national interest to acquire this right.

(4) The reservation in the United States of the rights to the invention in any country in which the contractor does not file an application for patent within such time as the Administration shall determine.

(5) The right in the Administrator to require the granting of a nonexclusive, exclusive, or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, (A) to the extent that the invention is required for public use by governmental regulations, or (B) as may be necessary to fulfill health, safety, or energy needs, or (C) for such other purposes as may be stipulated in the applicable agreement.

(6) The right in the Administrator to terminate such waiver or license in whole or in part unless the recipient of the waiver or license demonstrates to the satisfaction of the Administrator that he has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(7) The right in the Administrator, commencing three years after the grant of a license and four years after a waiver is effective as to an invention, to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate the waiver or license in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing—

(A) if the Administrator determines, upon review of such material as he deems relevant, and after the recipient of the waiver or license, or other interested person, has had the opportunity to provide such relevant and material information as the Administrator may require, that such waiver or license has tended substantially to lessen competition or to result in undue concentration in any section of the country in any line of commerce to which the technology relates; or

(B) unless the recipient of the waiver or license demonstrates to the satisfaction of the Administrator at such hearing that he has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(i) Publication in Federal Register by Administrator of waiver or license termination hearing requirements and availability of records.

The Administrator shall provide an annual periodic notice to the public in the Federal Register, or other appropriate publication, of the right to have a hearing as provided by subsection (h)(7) of this section, and of the availability of the records of determinations provided in this section.

(j) Small business status of applicant for waiver or licenses.

The Administrator shall, in granting waivers or licenses, consider the small business status of the applicant.

(k) Protection of invention, etc., rights by Administrator.

The Administrator is authorized to take all suitable and necessary steps to protect any invention or discovery to which the United States holds title, and to require that contractors or persons who acquire rights to inventions under this section protect such inventions.

(l) Administration as defense agency of United States for purpose maintaining secrecy of inventions.

The Administration shall be considered a defense agency of the United States for the purpose of chapter 17 of Title 35.

(m) Definitions.

As used in this section—

(1) the term "person" means any individual, partnership, corporation, association, institution, or other entity;

(2) the term "contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder;

(3) the term "made", when used in relation to any invention, means the conception or first actual reduction to practice of such invention;

(4) the term "invention" means inventions or discoveries, whether patented or unpatented; and

(5) the term "contractor" means any person having a contract with or on behalf of the Administration.

(n) Report concerning applicability of existing patent policies to energy programs; time for submission to President and appropriate congressional committees.

Within twelve months after December 31, 1974, the Administrator with the participation of the Attorney General, the Secretary of Commerce, and other officials as the President may designate, shall submit to the President and the appropriate congressional

committees a report concerning the applicability of existing patent policies affecting the programs under this chapter, along with his recommendations for amendments or additions to the statutory patent policy, including his recommendations on mandatory licensing, which he deems advisable for carrying out the purposes of this chapter. (Pub. L. 93–577, § 9, Dec. 31, 1974, 88 Stat. 1887.)

§ 5909. Relationship to antitrust laws.

(a) Nothing in this chapter shall be deemed to convey to any individual corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term "antitrust law" means—

(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.) as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Pub. L. 93–577, § 10, Dec. 31, 1974, 88 Stat. 1891.)

§ 5910. Environmental evaluations by Council on Environmental Quality.

(a) Continuing analysis of effect of nonnuclear energy technologies.

The Council on Environmental Quality is authorized and directed to carry out a continuing analysis of the effect of application of nonnuclear energy technologies to evaluate—

(1) the adequacy of attention to energy conservation methods; and

(2) the adequacy of attention to environmental protection and the environmental consequences of the application of energy technologies.

(b) Employment of consultants or contractors and services of other Federal agencies for studies and investigations.

The Council on Environmental Quality, in carrying out the provisions of this section, may employ consultants or contractors and may by fund transfer employ the services of other Federal agencies for the conduct of studies and investigations.

(c) Annual public hearings on conduct of energy research and development and environmental consequences; availability of transcript.

The Council on Environmental Quality shall hold annual public hearings on the conduct of energy research and development and the probable environmental consequences of trends in the development and application of energy technologies. The transcript of the hearings shall be published and made available to the public.

(d) Reports to President, Administrator, and Congress; inclusion by President of findings of Council in annual Environmental Quality Report.

The Council on Environmental Quality shall make such reports to the President, the Administrator, and the Congress as it deems appropriate concerning the conduct of energy research and development. The President as a part of the annual Environmental Policy Report required by section 4341 of this title shall se forth the findings of the Council on Environmental Quality concerning the probable environmental consequences of trends in the development and application of energy technologies. (Pub. L. 93–577, § 11, Dec. 31, 1974, 88 Stat. 1892.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5915 of this title.

§ 5911. Allocation or acquisition of essential materials and equipment pursuant to Presidential rule or order; transmission to Congress and effective date of proposed rule or order; disapproval by Congress.

(a) The President may, by rule or order, require the allocation of, or the performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment if he finds that—

(1) such supplies are scarce, critical, and essential to carry out the purposes of this chapter; and

(2) such supplies cannot reasonably be obtained without exercising the authority granted by this section.

(b) The President shall transmit any rule or order proposed under subsection (a) of this section (bearing an identification number) to each House of Congress on the date on which it is proposed. If such proposed rule or order is transmitted to the Congress such proposed rule or order shall take effect at the end of the first period of thirty calendar days of continuous session of Congress after the date on which such proposed rule or order is transmitted to it unless, between the date of transmittal and the end of the thirty day period, either House passes a resolution stating in substance that such House does not favor such a proposed rule or order. (Pub. L. 93–577, § 12, Dec. 31, 1974, 88 Stat. 1892.)

§ 5912. Water resource assessments.

(a) Request by Administrator for assessment by Water Resources Council of water resource requirements and water supply availability for nonnuclear energy technologies; preparation requirements.

At the request of the Administrator, the Water Resources Council shall undertake assessments of water resource requirements and water supply availability for any nonnuclear energy technology and any probable combinations of technologies which are the subject of Federal research and development efforts authorized by this chapter and the commercial development of which could have significant impacts on water resources. In the preparation of its assessment, the Council shall—

(1) utilize to the maximum extent practicable data on water supply and demand available in the files of member agencies of the Council;

(2) collect and compile any additional data it deems necessary for complete and accurate assessments;

(3) give full consideration to the constraints upon availability imposed by treaty, compact, court decree, State water laws, and water rights granted pursuant to State and Federal law;

(4) assess the effects of development of such technology on water quality;

(5) include estimates of cost associated with production and management of the required water supply, and the cost of disposal of waste water generated by the proposed facility or process;

(6) assess the environmental, social, and economic impact of any change in use of currently utilized water resource that may be required by the proposed facility or process; and

(7) consult with the Council on Environmental Quality.

(b) Assessment by Administrator or others of availability of adequate water resources as precondition for Federal assistance for proposed demonstration project; publication of report in Federal Register.

For any proposed demonstration project which may involve a significant impact on water resources, the Administrator shall, as a precondition of Federal assistance to that project, prepare or have prepared an assessment of the availability of adequate water resources. A report on the assessment shall be published in the Federal Register for public review thirty days prior to the expenditure of Federal funds on the demonstration.

(c) Assessment by Water Resources Council of availability of adequate water resources as precondition for Federal assistance for commercial application of nonnuclear energy technologies.

For any proposed Federal assistance for commercial application of energy technologies pursuant to this chapter, the Water Resource Council shall, as a precondition of such Federal assistance, provide to the Administrator an assessment of the availability of adequate water resources for such commercial application and an evaluation of the environmental, social, and economic impacts of the dedication of water to such uses.

(d) Publication of reports of assessments and evaluations by Water Resources Council in Federal Register; public review and comments.

Reports of assessments and evaluations prepared by the Council pursuant to subsections (a) and (c) of this section shall be published in the Federal Register and at least ninety days shall be provided for public review and comment. Comments received shall accompany the reports when they are submited to the Administrator and shall be available to the public.

(e) Inclusion of survey and analysis of regional and national water resource availability in biennial assessment by Water Resources Council.

The Council shall include a broad survey and analysis of regional and national water resource availability for energy development in the biennial assessment required by section 1962 a–1(a) of this title. (Pub. L. 93–577, § 13, Dec. 31, 1974, 88 Stat. 1893.)

§ 5913. Evaluation by National Bureau of Standards or energy-related inventions prior to awarding of grants by Administrator; promulgation of regulations.

The National Bureau of Standards shall give particular attention to the evaluation of all promising energy-related inventions, particularly those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Administrator. The National Bureau of Standards is authorized to promulgate regulations in the furtherance of this section. (Pub. L. 93–577, § 14, Dec. 31, 1974, 88 Stat. 1894.)

§ 5914. Reports to Congress.

(a) Required contents.

Concurrent with the submission of the President's annual budget to the Congress, the Administrator shall submit to the Congress each year—

(1) a report detailing the activities carried out pursuant to this chapter during the preceding fiscal year;

(2) a detailed description of the comprehensive plan for nuclear and nonnuclear energy research, development, and demonstration then in effect under section 5905(a) of this title; and

(3) a detailed description of the comprehensive nonnuclear research, development, and demonstration program then in effect under section 5905(b) of this title including its program elements and activities,

setting forth such modifications in the comprehensive plan referred to in clause (2) and the comprehensive program referred to in clause (3) as may be necessary to revise appropriately such plan and program in the light of the activities referred to in clause (1) and any changes in circumstances which may have occurred since the last previous report under this subsection.

(b) Additional required contents.

The description of the comprehensive nonnuclear research, development, and demonstration program submitted under subsection (a)(2) of this section shall include a statement setting forth—

(1) the anticipated research, development, and application objectives to be achieved by the proposed program;

(2) the economic, environmental, and societal significance which the proposed program may

(3) the total estimated cost of individual program items;

(4) the estimated relative financial contributions of the Federal Government and non-Federal participants in the research and development program;

(5) the relationship of the proposed program to any Federal national energy or fuel policies; and

(6) the relationship of any short-term undertakings and expenditures to long-range goals.

(c) Satisfaction of requirements for reports relating to development of energy sources.

The reports required by subsections (a) and (b) of this section will satisfy the reporting requirements of section 5877(a) of this title insofar as is concerned activities, goals, priorities, and plans of the Energy Research and Development Administration pertaining to nonnuclear energy. (Pub. L. 93–577, § 15, Dec. 31, 1974, 88 Stat. 1894.)

§ 5915. Authorization of appropriations.

(a) There may be appropriated to the Administrator to carry out the purposes of this chapter such sums as may be authorized in annual authorization Acts.

(b) Of the amounts appropriated pursuant to subsection (a) of this section—

(1) $500,000 annually shall be made available by fund transfer to the Council on Environmental Quality for the purposes authorized by section 5910 of this title; and

(2) not to exceed $1,000,000 annually shall be made available by fund transfer to the Water Resources Council for the purposes authorized by section 5912 of this title.

(c) There also may be appropriated to the Administrator by separate Acts such amounts as are required for demonstration projects for which the total Federal contribution to construction costs exceeds $50,000,000. (Pub. L. 93–577, § 16, Dec. 31, 1974, 88 Stat. 1894.)

49. Research Contracts, Department of Interior

42 U.S.C. 1900–1900b

§ 1900. Interior Department programs.

(a) Authorization for research contracts.

The Secretary of the Interior is authorized to enter into contracts with educational institutions, public or private agencies or organizations, or persons for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Department of the Interior which are authorized by statute.

(b) Capabilities of prospective contractors; advice and assistance, coordination of research, lines of inquiry, and cooperation.

The Secretary shall require a showing that the institutions, agencies, organizations, or persons with which he expects to enter into contracts pursuant to this section have the capability of doing effective work. He shall furnish such advice and assistance as he believes will best carry out the mission of the Department of the Interior, participate in coordinating all research initiated under this section, indicate the lines of inquiry which seem to him most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutions, agencies, organizations, or persons and between them and other research organizations, the United States Department of the Interior, and other Federal agencies.

(c) Research reports or publications.

The Secretary may from time to time disseminate in the form of reports or publications to public or private agencies or organizations, or individuals such information as he deems desirable on the research carried out pursuant to this section.

(d) Limitation; submission to Congress.

No contract involving more than $25,000 shall be executed under subsection (a) of this section prior to thirty calendar days from the date the same is submitted to the President of the Senate and the Speaker of the House of Representatives and said thirty calendar days shall not include days on which either the Senate or the House of Representatives is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die. (Pub. L. 89–672, § 1, Oct. 15, 1966, 80 Stat. 951.)

§ 1900a. Rules and regulations.

The Secretary shall prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter. (Pub. L. 89–672, § 2, Oct. 15, 1966, 80 Stat. 951.)

§ 1900b. Amendment, modification, or repeal of authorizations for execution of contracts for research.

Nothing contained in this chapter is intended to amend, modify, or repeal any provisions of law administered by the Secretary of the Interior which authorize the making of contracts for research. (Pub. L. 89–672, § 3, Oct. 15, 1966, 80 Stat. 951.)

50. Resource Conservation and Recovery Act of 1976 (Solid Waste Disposal)

P.L. 94–580 (90 Stat. 2795)

AN ACT

To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Resource Conservation and Recovery Act of 1976".

AMENDMENT OF SOLID WASTE DISPOSAL ACT

SEC. 2. The Solid Waste Disposal Act (42 U.S.C. 3251 and following) is amended to read as follows:

"TITLE II—SOLID WASTE DISPOSAL

"SUBTITLE A—GENERAL PROVISIONS

"SHORT TITLE AND TABLE OF CONTENTS

"SEC. 1001. This title (hereinafter in this title referred to as 'this Act'), together with the following table of contents, may be cited as the 'Solid Waste Disposal Act':

"CONGRESSIONAL FINDINGS

"SEC. 1002. (a) SOLID WASTE.—The Congress finds with respect to solid waste—

"(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characeristics, of the mass material discarded by the purchaser of such products;

"(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

"(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities

with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

"(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and appliaction of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid-waste disposal practices.

"(b) ENVIRONMENTAL AND HEALTH.—The Congress finds with respect to the environmental and health, that—

"(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills:

"(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

"(3) as a result of the Clean Air Act, the Water Pollution Control Act, and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

"(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

"(5) hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and

"(6) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken;

"(c) MATERIALS.—The Congress finds with respect to materials, that—

"(1) millions of tons of recoverable materials which could be used are needlessly buried each year;

"(2) methods are available to separate usable materials from solid waste; and

"(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

"(d) ENERGY.—The Congress finds with respect to energy, that—

"(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;

"(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and

"(3) technology exists to produce usable energy from solid waste.

"OBJECTIVES

"SEC. 1003. The objectives of this Act are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

"(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resources recovery and resources conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

"(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

"(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

"(4) regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment;

"(5) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

"(6) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

"(7) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

"(8) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

"DEFINITIONS

"SEC. 1004. As used in this Act:

"(1) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) The term 'construction,' with respect to any project of construction under this Act, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

"(2A) The term 'demonstration' means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

"(3) The term 'disposal' means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"(4) The term 'Federal agency' means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"(5) The term 'hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

"(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversable, or incapacitating reversible, illness; or

"(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

"(6) The term 'hazardous waste generation' means the act or process of producing hazardous waste.

"(7) The term 'hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment recovery, and disposal of hazardous wastes.

"(8) For purposes of Federal financial assistance (other than rural communities assistance), the term 'implementation' does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land and after December 31, 1979, such term does not include salaries of employees due pursuant to subtitle D of this Act.

"(9) The term 'intermunicipal agency' means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

"(10) The term 'interstate agency' means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the disposal of solid wastes and serving two or more municipalities located in different States.

"(11) The term 'long-term contract' means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

"(12) The term 'manifest' means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

"(13) The term 'municipality' (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

"(14) The term 'open dump' means a site for the disposal of solid waste which is not a sanitary landfill within the meaning of section 4004.

"(15) The term 'person' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

"(16) The term 'procurement item' means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

"(17) The term 'procuring agency' means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

"(18) The term 'recoverable' refers to the capability and likelihood of being recovered from solid

waste for a commercial or industrial use.

"(19) The term 'recovered material' means material which has been collected or recovered from solid waste.

"(20) The term 'recovered resources' means material or energy recovered from solid waste.

"(21) The term 'resource conservation' means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

"(22) The term 'resource recovery' means the recovery of material or energy from solid waste.

"(23) The term 'resource recovery system' means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

"(24) The term 'resource recovery facility' means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

"(25) The term 'regional authority' means the authority established or designated under section 4006.

"(26) The term 'sanitary landfill' means a facility for the disposal of solid waste which meets the criteria published under section 4004.

"(26A) The term 'sludge' means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

"(27) The term 'solid waste' means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"(28) The term 'solid waste management' means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

"(29) The term 'solid waste management facility' includes (A) any resource recovery system or component thereof, (B) any system, program, or facility for resource conservation, and (C) any facility for the treatment of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

"(30) The terms 'solid waste planning', 'solid waste management', and 'comprehensive planning' include planning or management respecting resource recovery and resource conservation.

"(31) The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(32) The term 'State authority' means the agency established or designated under section 4007.

"(33) The term 'storage', when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

"(34) The term 'treatment', when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"(35) The term 'virgin material' means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

"GOVERNMENTAL COOPERATION

"SEC. 1005. (a) INTERSTATE COOPERATION.—The provisions of this Act to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

"(b) CONSENT OF CONGRESS TO COMPACTS.—The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

"(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

"(2) the establishment of such agencies, joint or otherwise as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.

"APPLICATION OF ACT AND INTEGRATION WITH OTHER ACTS

"SEC. 1006. (a) APPLICATION OF ACT.—Nothing in this Act shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Safe Drinking Water Act (42 U.S.C. 300f and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

"(b) INTEGRATION WITH OTHER ACTS.—The Administrator shall integrate all provisions of this Act for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act (42 U.S.C. 1857 and following), the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 and following), the Safe Drinking Water Act (42 U.S.C. 300F and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following) and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this Act and in the other acts referred to in this subsection.

"FINANCIAL DISCLOSURE

"SEC. 1007. (a) STATEMENT.—Each officer or employee of the Administrator who—

"(1) performs any function or duty under this Act; and

"(2) has any known financial interest in any person who applies for or receives financial assistance under this Act

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

"(b) ACTION BY ADMINISTRATOR.—The Administrator shall—

"(1) act within ninety days after the date of enactment of this Act—

"(A) to define the term 'known financial interest' for purposes of subsection (a) of this section; and

"(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

"(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calender year.

"(c) EXEMPTION.—In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

"(d) PENALTY.—Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

"SOLID WASTE MANAGEMENT INFORMATION AND GUIDELINES

"SEC. 1008. (a) GUIDELINES.—Within one year of enactment of this section, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

"(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;

"(2) not later than two years after the enactment of this section, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended; (E) disease and vector control; (F) safety; and (G) esthetics; and

"(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under title IV of this Act.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

"(b) NOTICE.—The Administrator shall notify the Committee on Public Works of the Senate and the Committee on Interstate and Foreign Com-

merce of the House of Representatives a reasonable time before publishing any suggested guidelines, pursuant to this section of the content of such proposed suggested guidelines.

"Subtitle B—Office of Solid Waste; Authorities of the Administrator

"OFFICE OF SOLID WASTE

"SEC. 2001. The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the 'Office') to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this Act (as modified by applicable reorganization plans) shall be carried out through the Office.

"AUTHORITIES OF ADMINISTRATOR

"SEC. 2002. (a) AUTHORITIES.—In carrying out this Act, the Administrator is authorized to—

"(1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this Act;

"(2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;

"(3) provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;

"(4) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable; and

"(5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Bureau of Standards and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this Act.

"(b) REVISION OF REGULATIONS.—Each regulation promulgated under this Act shall be reviewed and, where necessary, revised not less frequently than every three years.

"RESOURCE RECOVERY AND CONSERVATION PANELS

"SEC. 2003. The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as 'Resource Conservation and Recovery Panels') to provide States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

"GRANTS FOR DISCARDED TIRE DISPOSAL

"SEC. 2004. (a) GRANTS.—The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

"(b) AUTHORIZATION.—There is authorized to be appropriated $750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

"ANNUAL REPORT

"SEC. 2005. The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

"(1) a statement of specific and detail objectives for the activities and programs conducted and assisted under this Act;

"(2) statements of the Administrator's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this Act, measured through the end of such fiscal year;

"(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;

"(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;

"(5) all other information required to be submitted to the Congress pursuant to any other provision of this Act; and

"(6) the Administrator's plans for activities and programs respecting solid waste during the next fiscal year.

"GENERAL AUTHORIZATION

"SEC. 2006. (a) GENERAL ADMINISTRATION.—There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this Act, $35,000,000 for the fiscal year

ending September 30, 1977, $38,000,000 for the fiscal year ending September 30, 1978, and $42,000,000 for the fiscal year ending September 30, 1979.

"(b) RESOURCE RECOVERY AND CONSERVATION PANELS.—Not less than 20 percent of the amount appropriated under subsection (a) shall be used only for purposes of Resource Recovery and Conservation Panels established under section 2003 (including travel expenses incurred by such panels in carrying out their functions under this Act).

"(c) HAZARDOUS WASTE.—Not less than 30 percent of the amount appropriated under subsection (a) shall be used only for purposes of carrying out subtitle C of this Act (relating to hazardus waste) other than section 3011.

"Subtitle C—Hazardous Waste Management

"IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

"SEC. 3001. (a) CRITERIA FOR IDENTIFICATION OR LISTING.—Not later than eighteen months after the date of the enactment of this Act, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subtitle, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

"(b) IDENTIFICATION AND LISTING.—Not later than eighteen months after the date of enactment of this section, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 1004(5)), which shall be subject to the provisions of this subtitle. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate.

"(c) PETITION BY STATE GOVERNOR.—At any time after the date eighteen months after the enactment of this title, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

"STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

"SEC. 3002. Not later than eighteen months after the date of the enactment of this section, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

"(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

"(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

"(3) use of appropriate containers for such hazardous waste;

"(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

"(5) use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subtitle; and

"(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subtitle at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

"(A) the quantities of hazardous waste identified or listed under this subtitle that he has generated during a particular time period; and

"(B) the disposition of all hazardous waste reported under subparagraph (A).

"STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

"SEC. 3003. (a) STANDARDS.—Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

"(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

"(2) transportation of such waste only if properly labeled;

"(3) compliance with the manifest system referred to in section 3002(5); and

"(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subtitle.

"(b) COORDINATION WITH REGULATIONS OF SECRETARY OF TRANSPORTATION.—In case of any hazardous waste identified or listed under this subtitle which is subject to the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 and following), the regulations promulgated by the Administrator under this subtitle shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

"STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

"SEC. 3004. Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting—

"(1) maintaining records of all hazardous wastes identified or listed under this title which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

"(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 3002(5);

"(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

"(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

"(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

"(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable; and

"(7) compliance with the requirements of section 3005 respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

"PERMITS FOR TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTE

"SEC. 3005. (a) PERMIT REQUIREMENTS.—Not later than eighteen months after the date of the enactment of this section, the Administrator shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 3010 and upon and after such date the disposal of any such hazardous waste is prohibited except in accordance with such a permit.

"(b) REQUIREMENTS OF PERMIT APPLICATION.—Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

"(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subtitle, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

"(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

"(c) PERMIT ISSUANCE.—Upon a determination by the Administration (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 3004, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 3004, the permit shall specify the time allowed to complete the modifications.

"(d) PERMIT REVOCATION.—Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 3006) of noncompliance by a facility having a permit under this title with the requirements of this section or section 3004, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 3006) shall revoke such permit.

"(e) INTERIM STATUS.—Any person who—

"(1) owns or operates a facility required to have a permit under this section which facility is in existence on the date of enactment of this Act,

"(2) has complied with the requirements of section 3010(a), and

"(3) has made an application for a permit under this section

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

"AUTHORIZED STATE HAZARDOUS WASTE PROGRAMS

"SEC. 3006. (a) FEDERAL GUIDELINES.—Not later than eighteen months after the date of enactment of this Act, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the development of State hazardous waste programs.

"(b) AUTHORIZATION OF STATE PROGRAM.—Any State which seeks to administer and enforce a hazardous waste program pursuant to this subtitle may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subtitle in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subtitle, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subtitle.

"(c) INTERIM AUTHORIZATION.—Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date required for promulgation of regulations under sections 3002, 3003, 3004, and 3005, submit to the Administrator evidence of such existing program any may request a temporary authorization to carry out such program under this subtitle. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subtitle for a twenty-four month period beginning on the date six months after the date required for promulgation of regulations under sections 3002 through 3005.

"(d) EFFECT OF STATE PERMIT.—Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subtitle.

"(e) WITHDRAWAL OF AUTHORIZATION.—Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subtitle. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

"INSPECTIONS

"SEC. 3007. (a) ACCESS ENTRY.—For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this subtitle, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer or employee of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer employee of a State having an authorized hazardous waste program, furnish or permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, such officers or employees are authorized—

"(1) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are generated, stored, treated, or disposed of;

"(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such

samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) AVAILABILITY TO PUBLIC.—Any records, reports, or information obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, the Administrator (or the State, as the case may be) shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

"FEDERAL ENFORCEMENT

"SEC. 3008. (a) COMPLIANCE ORDERS.—(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

"(2) In the case of a violation of any requirement of this subtitle where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 3006, the Administrator shall give notice to the State in which such violation has occurred thirty days prior to issuing an order or commencing a civil action under this section.

"(3) If such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

"(b) PUBLIC HEARING.—Any order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

"(c) REQUIREMENTS OF COMPLIANCE ORDERS.—Any order issued under this section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

"(d) CRIMINAL PENALTY.—Any person who knowingly—

"(1) transports any hazardous waste listed under this subtitle to a facility which does not have a permit under section 3005 (or 3006 in the case of a State program),

"(2) disposes of any hazardous waste listed under this subtitle without having obtained a permit therefor under this subtitle,

"(3) makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of compliance with this subtitle.

shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed one year, or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

"RETENTION OF STATE AUTHORITY

"SEC. 3009. Upon the effective date of regulations under this subtitle no State or political subdivision may impose any requirements less stringent than those authorized under this subtitle respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subtitle is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect.

"EFFECTIVE DATE

"SEC. 3010. (a) PRELIMINARY NOTIFICATION.—Not later than ninety days after promulgation or revision of regulations under section 3001 identifying by its characteristics or listing any substance as hazardous waste subject to this subtitle, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not more than one such notification shall be re-

quired to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subtitle may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

"(b) EFFECTIVE DATE OF REGULATION.—The regulations under this subtitle respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof).

"AUTHORIZATION OF ASSISTANCE TO STATES

SEC. 3011. (a) AUTHORIZATION.—There is authorized to be appropriated $25,000,000 for each of the fisacl years 1978 and 1979 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

"(b) ALLOCATION.—Amounts authorized to be appropriated under subsection (a) shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

"Subtitle D—State or Regional Solid Waste Plans

"OBJECTIVES OF SUBTITLE

"SEC. 4001. The objectives of this subtitle are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry.

"FEDERAL GUIDELINES FOR PLANS

"SEC. 4002. (a) GUIDELINES FOR IDENTIFICATION OF REGIONS.—For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after the date of enactment of this section and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

"(1) the size and location of areas which should be included,

"(2) the volume of solid waste which should be included, and

"(3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

"(b) GUIDELINES FOR STATE PLANS.—Not later than eighteen months after the date of enactment of this section and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this title referred to as 'State plans'). The guidelines shall contain methods for achieving the objectives specified in section 4001. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

"(c) CONSIDERATION FOR STATE PLAN GUIDELINES.—The guidelines promulgated under subsection (b) shall consider—

"(1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

"(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;

"(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;

"(4) population density, distribution, and projected growth;

"(5) geographic, geologic, climatic, and hydrologic characteristics;

"(6) the type and location of transportation;

"(7) the profile of industries;

"(8) the constituents and generation rates of waste;

"(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;

"(10) types of resource recovery facilities and resource conservation systems which are appropriate; and

"(11) available new and additional markets for recovered material.

"MINIMUM REQUIREMENTS FOR APPROVAL OF PLANS

"SEC. 4003. In order to be approved under sec-

tion 4007, each State plan must comply with the following minimum requirements—

"(1) The plan shall identify (in accordance with section 4006(b)) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

"(2) The plan shall, in accordance with section 4005(c), prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaninng of section 4004 (a)) or otherwise disposed of in an environmentally sound manner.

"(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 4005.

"(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

"(5) The plan shall provide that no local government within the State shall be prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

"(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

"CRITERIA FOR SANITARY LANDFILLS; SANITARY LANDFILLS REQUIRED FOR ALL DISPOSAL

"SEC. 4004. (a) CRITERIA FOR SANITARY LANDFILLS.—Not later than one year after the date of enactment of this section, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this Act. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

"(b) DISPOSAL REQUIRED TO BE IN SANITARY LANDFILLS, ETC.—For purposes of complying with section 4003(2) each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 4003(2).

"(c) EFFECTIVE DATE.—The prohibition contained in subsection (b) shall take effect on the date six months after the date of promulgation of regulations under subsection (a) or on the date of approval of the State plan, whichever is later.

"UPGRADING OF OPEN DUMPS

"SEC. 4005. (a) OPEN DUMPS.—For purposes of this Act, the term 'open dump' means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 4004 and which is not a facility for disposal of hazardous waste.

"(b) INVENTORY.—Not later than one year after promulgation of regulations under section 4004, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this Act.

"(c) CLOSING OR UPGRADING OF EXISTING OPEN DUMPS.—Any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. For purposes of complying with section 4003(2), each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of the inventory under subsection (b)).

"PROCEDURE FOR DEVELOPMENT AND IMPLEMENTATION OF STATE PLAN

"SEC. 4006. (a) IDENTIFICATION OF REGIONS.—Within one hundred and eighty days after publication of guidelines under section 4002(a) (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and

other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

"(b) IDENTIFICATION OF STATE AND LOCAL AGENCIES AND RESPONSIBILITIES.—(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a), for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 4003, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste functions will, under such State plan, be planned for and carried out by the State and which such functions will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multifunctional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on the date of enactment of this Act, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 208 of the Federal Water Pollution Control Act (86 Stat. 839) shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

"(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a), establish or designate a State agency to develop and implement the State plan for such area.

"(c) INTERSTATE REGIONS.—(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 4002(a) (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a).

"(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

"(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

"(4) For purposes of this subtitle, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.

"APPROVAL OF STATE PLAN; FEDERAL ASSISTANCE

"SEC. 4007. (a) PLAN APPROVAL.—The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

"(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 4003; and

"(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

"(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 4003 with which the State plan is not in compliance;

"(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subtitle; or

"(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 4003 (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

"(b) ELIGIBILITY OF STATES FOR FEDERAL ASSISTANCE.—(1) The Administrator shall approve a State application for financial assistance under this subtitle, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 4006 within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subtitle.

"(2) The Administrator shall approve a State

application for financial assistance under this subtitle, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) and is being implemented by the State.

"(3) Upon withdrawal of approval of a State plan under subsection (a), the Administrator shall withhold Federal financial and technical assistance under this subtitle (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

"(C) EXISTING ACTIVITIES.—Nothing in this subtitle shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subtitle.

"FEDERAL ASSISTANCE

"SEC. 4008. (a) AUTHORIZATION OF FEDERAL FINANCIAL ASSISTANCE.—(1) There are authorized to be appropriated $30,000,000 for fiscal year 1978 and $40,000,000 for fiscal year 1979 for purposes of making grants to the States for the development and implementation of State plans under this subtitle.

"(2) (A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

"(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 4005 and Subtitle C of this Act and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 1008 of this Act. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program.

"(C) There are authorized to be appropriated $15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section.

"(b) STATE ALLOTMENT.—The sums appropriated in any fiscal year under subsection (a) (1) shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

"(c) DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE WITHIN THE STATE.—The Federal assistance allotted to the States under subsection (b) shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 4006(b).

"(d) TECHNICAL ASSISTANCE.—The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subtitle B, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

"(e) SPECIAL COMMUNITIES.—(1) The Administrator, in cooperation with State and local officials, shall identify communities within the United States (A) having a population of less than twenty-five thousand persons, (B) having solid waste disposal facilities in which more than 75 per centum of the solid waste disposal of is from areas outside the jurisdiction of the communities, and (C) which have serious environmental problems resulting from the disposal of such solid waste.

"(2) There is authorized to be appropriated to the Administrator $2,500,000 for each of the fiscal years 1978 and 1979 to make grants to be used for the conversion, improvement, or consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1). Not more than one community in any State shall be eligible for grants under this

paragraph and not more than one project in any State shall be eligible for such grants.

"(3) Grants under this subsection shall be made only to projects which the Administrator determines will be consistent with an applicable State plan approved under this subtitle and which will assist in carrying out such plan.

"RURAL COMMUNITIES ASSISTANCE

"SEC. 4009. (a) IN GENERAL.—The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 4005 of this Act or restrictions on open burning or other requirements arising under the Clean Air Act or the Federal Water Pollution Control Act. Such assistance shall only be available—

"(1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

"(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 4005 of this Act; and

"(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

"(b) ALLOTMENT.—The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the initial population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

"(c) LIMIT.—The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

"(d) APPROPRIATIONS.—There are authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section.

"Subtitle E—Duties of the Secretary of Commerce in Resource and Recovery

"FUNCTIONS

"SEC. 5001. The Secretary of Commerce shall encourage greater commercialization of proven recovery technology by providing—

"(1) accurate specifications for recovered materials;

"(2) stimulation of development of markets for recovered materials;

"(3) promotion of proven technology; and

"(4) a forum for the exchange of technical and economic data relating to resource recovery facilities.

"DEVELOPMENT OF SPECIFICATIONS FOR SECONDARY MATERIALS

"SEC. 5002. The Secretary of Commerce, acting through the National Bureau of Standards, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after the date of the enactment of this Act, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

"DEVELOPMENT OF MARKETS FOR RECOVERED MATERIALS

"SEC. 5003. The Secretary of Commerce shall within two years after the enactment of this Act take such actions as may be necessary to—

"(1) identify the geographical location of existing or potential markets for recovered materials;

"(2) identify the economic and technical barriers to the use of recovered materials; and

"(3) encourage the development of new uses for recovered materials.

"TECHNOLOGY PROMOTION

"SEC. 5004. The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system.

"Subtitle F—Federal Responsibilities

"APPLICATION OF FEDERAL, STATE, AND LOCAL LAW TO FEDERAL FACILITIES

"SEC. 6001. Each department, agency, and in-

strumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

"FEDERAL PROCUREMENT

"SEC. 6002. (a) APPLICATION OF SECTION.—Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

"(b) PROCUREMENT SUBJECT TO OTHER LAW.—Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6004 (as promulgated before the date of enactment of this section under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

"(c) REQUIREMENTS.—(1)(A) After two years after the date of enactment of this section, each procuring agency shall procure items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition. The decision not to procure such items shall be based on a determination that such procurement items—

"(i) are not reasonably available within a reasonable period of time;

"(ii) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies: or

"(iii) are only available at an unreasonable price. Any determination under clause (ii) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which such material is covered by such guidelines.

"(B) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using recovered material and recovered-material-derived fuel as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

"(C) Contracting officers shall require that vendors certify the percentage of the total material utilized for the performance of the contract which is recovered materials.

"(d) SPECIFICATIONS.—(1) All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement item procured by Federal agencies shall, in reviewing those specifications, ascertain whether such specifications violate the prohibitions contained in subparagraphs (A) through (C) of paragraph (2). Such review shall be undertaken not later than eighteen months after the date of enactment of this section.

"(2) In drafting or revising such specifications, after the date of enactment of this section—

"(A) any exclusion of recovered materials shall be eliminated;

"(B) such specification shall not require the item to be manufactured from virgin materials; and

"(C) such specifications shall require reclaimed materials to the maximum extent possible without jeopardizing the intended end use of the item.

"(e) GUIDELINES.—The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Bureau of Standards), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and shall provide information as to the availability, sources of supply, and potential uses of such materials and items.

"(f) PROCUREMENT OF SERVICES.—A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

"(g) EXECUTIVE OFFICE. The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the policy expressed in this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to annually report to the Congress on actions taken by Federal agencies and the progress made in the implementation of such policy.

"COOPERATION WITH ENVIRONMENTAL PROTECTION AGENCY

"SEC. 6003. All Federal agencies having functions relating to solid waste or hazardous waste shall cooperate to the maximum extent permitted by law with the Administrator in carrying out his functions under this Act and shall make all appropriate information, facilities, personnel, and other resources available, on a reimbursable basis, to the Administrator upon his request.

"APPLICABILITY OF SOLID WASTE DISPOSAL GUIDELINES TO EXECUTIVE AGENCIES

"SEC. 6004. (a) COMPLIANCE.—(1) If—

"(A) an Executive agency (as defined in section 105 of title 5, United States Code) has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste disposal activities, or

"(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste disposal activities,

then such agency shall insure compliance with the guidelines recommended under section 1008 and the purposes of this Act in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

"(2) Each Executive agency which conducts any activity—

"(A) which generates solid waste, and

"(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this Act in conducting such activity.

"(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this Act in the disposal of such waste.

"(4) The President shall prescribe regulations to carry out this subsection.

"(b) LICENSES AND PERMITS.—Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Secretary to insure compliance with guidelines recommended under section 1008 and the purposes of this Act.

"Subtitle G—Miscellaneous Provisions

"EMPLOYEE PROTECTION

"SEC. 7001. (a) GENERAL.—No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee of any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act or of any applicable implementation plan.

"(b) REMEDY.—Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this Act.

"(c) COSTS.—Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

"(d) EXCEPTION.—This section shall have no application to any employee who, acting without

direction from his employer (or his agent) deliberately violates any requirement of this Act.

"(e) EMPLOYMENT SHIFTS AND LOSS.—The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this Act and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this Act or any applicable implementation plan.

"CITIZEN SUITS

"SEC. 7002. (a) IN GENERAL.—Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be.

"(b) ACTIONS PROHIBITED.—No action may be commenced under paragraph (a)(1) of this section—

"(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to requre compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however,* That in any such action in a court of the United States, any person may intervene as a matter of right.

"(c) NOTICE.—No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 212 of this Act. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this Act may be brought under this section only in the judicial district in which such alleged violation occurs.

"(d) INTERVENTION.—In any action under this section the Administrator, if not a party, may intervene as a matter of right.

"(e) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, requiring the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(f) OTHER RIGHTS PRESERVED.—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

"IMMINENT HAZARD

"SEC. 7003. Notwithstanding any other provision of this Act, upon receipt of evidence that the handling, storage, treatment, transportation or dis-

posal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person for contributing to the alleged disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. The Administrator shall provide notice to the affected State of any such suit.

"PETITION FOR REGULATIONS; PUBLIC PARTICIPATION

"SEC. 7004. (a) PETITION.—Any person may petition, or program under this Act shall be provided amendment, or repeal of any regulation under this Act. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect of such petition, and shall publish notice of such action in the Federal Register, together with the reasons therefor.

"(b) PUBLIC PARTICIPATION.—Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this Act shall be provided for, encouraged, and assisted by the Adminstrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

"SEPARABILITY

"SEC. 7005. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

"JUDICIAL REVIEW

"SEC. 7006. Any judicial review of final regulations promulgated pursuant to this Act shall be in accordance with sections 701 through 706 of title 5 of the United States Code, except that—

"(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this Act may be filed only in the United States Court of Appeals for the District of Columbia. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

"(2) in any judicial proceeding brought under this section in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

"GRANTS OR CONTRACTS FOR TRAINING PROJECTS

"SEC. 7007. (a) GENERAL AUTHORITY.—The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term "eligible organization" means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

"(b) PURPOSES.—(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

"(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste disposal and resources recovery equipment and facilities; or

"(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste disposal and resource recovery equipment and facilities.

"(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as required by section 207(b)(4) and (5) (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976) with respect to applications made under such section (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976).

"(c) STUDY.—The Administrator shall make a complete investigation and study to determine—

"(1) the need for additional trained State

and local personnel to carry out plans assisted under this Act and other solid waste and resource recovery programs;

"(2) means of using existing training programs to train such personnel; and

"(3) the extent and nature of obstacles to employment and occupational advancement in the solid waste disposal and resource recovery field which may limit either available manpower or the advancement of personnel in such fields.

He shall report the results of such investigation and study, including his recommendations to the President and the Congress.

"PAYMENTS

"SEC. 7008. (a) GENERAL RULE.—Payments of grants under this Act may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

"(b) PROHIBITION.—No grant may be made under this Act to any private profitmaking organization.

"LABOR STANDARDS

"SEC. 7009. No agent for a project of construction under this Act shall be made unless the Secretary finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5), will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with that Act; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z–5) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"Subtitle H—Research, Development, Demonstration, and Information

"RESEARCH, DEMONSTRATIONS, TRAINING, AND OTHER ACTIVITIES

"SEC. 8001. (a) GENERAL AUTHORITY.—The Administrator, alone or after consultation with the Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

"(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

"(2) the operation and financing of solid waste disposal programs;

"(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;

"(4) the production of usable forms of recovered resources, including fuel, from solid waste;

"(5) the reduction of the amount of such waste and unsalvageable waste materials;

"(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;

"(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;

"(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;

"(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;

"(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;

"(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);

"(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and

"(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of disposal or energy recovery.

"(b) MANAGEMENT PROGRAM.—(1) (A) In carrying out his functions pursuant to this Act, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new

technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

"(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this Act or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

"(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Energy Research and Development Administration pursuant to this or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Energy Research and Development Administration; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with an applicable suggested guidelines published pursuant to section 1008, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 8002 and 8003 as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Energy Research and Development Administration.

"(c) AUTHORITIES.—(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 8004(d), the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

"(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in title 10, United States Code, section 2353, except that the determination, approval, and certification required thereby shall be made by the Administrator.

"(3) Any invention made or conceived in the course of, or under, any contract under this Act shall be subject to section 9 of the Federal Nonnucluear Energy Research and Development Act of 1974 to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act, except that in applying such section, the Environmental Protection Agency shall be substituted for the Energy Research and Development Administration and the words 'solid waste' shall be substituted for the word 'energy' where appropriate.

"(4) For carrying out the purpose of this Act the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.

"SPECIAL STUDIES; PLANS FOR RESEARCH, DEVELOPMENT, AND DEMONSTRATIONS

"SEC. 8002. (a) GLASS AND PLASTIC.—The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technology, and economic investigation of potential solutions to implement such recovery.

"(b) COMPOSITION OF WASTE STREAM.—The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

"(c) PRIORITIES STUDY.—For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterfall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

"(1) the degree of public need for the potential results of such research, development, or demonstration,

"(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

"(3) the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

"(d) SMALL-SCALE AND LOW TECHNOLOGY STUDY.—The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

"(e) FRONT-END SOURCE SEPARATION.—The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

"(f) MINING WASTE.—The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

"(1) the sources and volume of discarded material generated per year from mining;

"(2) present disposal practices;

"(3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;

"(4) alternatives to current disposal methods;

"(5) the cost of those alternatives in terms of the impact on mine product costs; and

"(6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include apropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

"(g) SLUDGE.—The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

"(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;

"(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;

"(3) the amounts of sludge originating in each State and in each industry producing sludge;

"(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;

"(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and

"(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

"(h) TIRES.—The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

"(i) RESOURCE RECOVERY FACILITIES.—The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

"(j) RESOURCE CONSERVATION COMMITTEE.—(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

"(A) the appropriateness of reommended incentives and disincentives to foster resource conservation;

"(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

"(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

"(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management changes would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

"(E) the need for further research, develop-

ment, and demonstration in the area of resource conservation.

"(2) The study required in paragraph (2)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

"(A) the product categories on which such charges would be imposed;

"(B) the appropriate state in the production of such consumer product at which to levy such charge;

"(C) appropriate criteria for establishing such charges for each consumer product category;

"(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

"(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

"(3) The design for the study required in paragraph (2)(D) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following enactment of this section and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

"(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after enactment of this subsection.

"(5) There are authorized to be appropriated not to exceed $2,000,000 to carry out this subsection.

"(k) AIRPORT LANDFILLS.—The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

"(l) COMPLETION OF RESEARCH AND STUDIES.—The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), (i), and (j) not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

"(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not to exceed $8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j).

"COORDINATION, COLLECTION, AND DISSEMINATION OF INFORMATION

"SEC. 8003. (a) INFORMATION.—The Administrator shall develop, collect, evaluate, and coordinate information on—

"(1) methods and costs of the collection of solid waste;

"(2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;

"(3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various discarded materials management practices and various technologies;

"(4) methods available to reduce the amount of solid waste that is generated;

"(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

"(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

"(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

"(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

"(9) research and development projects respecting solid waste management.

"(b) LIBRARY.—(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

"(i) the various methods of energy and resource recovery from solid waste,

"(ii) the various systems and means of resource conservation,

"(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

"(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d), and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this Act and which may be of value to

Federal, State, and local authorities and other persons.

"(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

"(c) MODEL ACCOUNTING SYSTEM.—In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system aplicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

"(d) MODEL CODES.—The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

"(e) INFORMATION PROGRAMS.—(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

"(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

"(f) COORDINATION.—In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

"(g) SPECIAL RESTRICTION.—Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Enironmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.

"FULL-SCALE DEMONSTRATION FACILITIES

"SEC. 8004.(a) AUTHORITY.—The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this Act, or provide financial assistance in the form of grants to a full-scale demonstration facility under this Act only if the Administrator finds that—

"(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in discarded material management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this Act),

"(2) such contract or assistance meets the requirements of section 8001 and meets other applicable requirements of the Act,

"(3) such facility will be able to comply with the guidelines published under section 1008 and with other laws and regulations for the protection of health and the environment,

"(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

"(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this Act.

"(b) TIME LIMITATION.—No obligation may be made by the Administration for financial assistance under this subtitle for any full-scale demonstration facility after the date ten years after the enactment of this section. No expenditure of funds for any such full-scale demonstration facility under this subtitle may be made by the Administrator after the date fourteen years after such date of enactment.

"(c) COST SHARING.—Whenever practicable, in constructing, operating, or providing financial assistance under this subtitle to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

"(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this Act) for purposes of obtaining information concerning the performance, and other as-

pects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 8001(c)(3), title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

"(d) PROHIBITION.—After the date of enactment of this section, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).

"SPECIAL STUDY AND DEMONSTRATION PROJECTS ON RECOVERY OF USEFUL ENERGY AND MATERIALS

"SEC. 8005. (a) STUDIES.—The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

"(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

"(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

"(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

"(4) the use of Federal procurement to develop market demand for recovered resources;

"(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

"(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

"(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

"(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

"(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

"(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

"(b) DEMONSTRATION.—The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a).

"(c) APPLICATION OF OTHER SECTIONS.—Section 8001 (b) and (c) shall be applicable to investigations, studies, and projects carried out under this section.

"GRANTS FOR RESOURCE RECOVERY SYSTEMS AND IMPROVED SOLID WASTE DISPOSAL FACILITIES

"SEC. 8006. (a) AUTHORITY.—The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

"(b) CONDITIONS.—(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subtitle D of this Act; (B) is consistent with the guidelines recommended pursuant to section 1008 of this Act; (C) is designed to provide areawide resource recovery systems consistent with the purposes of this Act, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

"(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

"(c) LIMITATIONS.—(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

"(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this Act, and (iii) is consistent

with the guidelines recommended under section 1008, and

"(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

"(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

"(d) REGULATIONS.—(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

"(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

"(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

"(e) ADDITIONAL LIMITATIONS.—A grant under this section—

"(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) applies, the first-year operation and maintenance costs;

"(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

"(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

"(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this Act.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

"(f) SINGLE STATE.—(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

"(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 8007. There are authorized to be apropriated not to exceed $35,000,000 for the fiscal year 1978 to carry out the purposes of this substitle (except for section 8002).".

SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA

SEC. 3. (a) The President shall direct such executive departments or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska and the appropriate Native organizations, to determine the best overall procedures for removing existing solid waste on Federal lands in Alaska. Such study shall include, but shall not be limited to, a consideration of—

(1) alternative procedures for removing the solid waste in an environmentally safe manner, and

(2) the estimated costs of removing the solid waste.

(b) The President shall submit a report of the results together with appropriate supporting data and such recommendations as he deems desirable to the Committee on Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives not later than one year after the enactment of the Solid Waste Utilization Act of 1976. The President shall also submit, within six months after the study has been submitted to the committees, recommended administrative actions, procedures, and needed legislation to implement such procedures and the recommendations of the study.

SEC. 4. (a) In order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, the Administrator of the Environmental Protection Agency is authorized to provide technical and financial assistance for a research program to control leachate from the Llangollen Landfill in New Castle County, Delaware.

(b) The research program authorized by this section shall be designed by the New Castle County areawide waste treatment management program, in cooperation with the Environmental Protection Agency, to develop methods for controlling leachate contamination from abandoned and other landfills that may be applied at the Llangollen Landfill and at other landfills throughout the Nation. Such research program shall investigate all alternative solutions or corrective actions including—

(1) hydrogologic isolation of the landfill combined with the collection and treatment of leachate;

(2) excavation of the refuse, followed by some type of incineration;

(3) excavation and transportation of the refuse to another landfill; and

(4) collection and treatment of contaminated leachate or ground water.

Such research program shall consider the economic, social, and environmental consequences of each such alternative.

(c) The Administrator of the Environmental Protection Agency shall make available personnel of the Agency, including those of the Solid and Hazardous Waste Research Laboratory (Cincinnati, Ohio), and shall arrange for other Federal personnel to be made available, to provide technical assistance and aid in such research. The Administrator may provide up to $250,000, of the sums appropriated under the Solid Waste Disposal Act, to the New Castle County areawide waste treatment management program to conduct such research, including obtaining consultant services.

(d) In order to prevent further damage to public water supplies during the period of this study, the Administrator of the Environmental Protection Agency shall provide up to $200,000 in each of fiscal years 1977 and 1978, of the sums appropriated under the Solid Waste Disposal Act for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill.

51. Rights-of-Way for Pipelines Through Federal Lands

30 U.S.C. 185

§ 185. Rights-of-way for pipelines through Federal lands.

(a) Grant of authority.

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions.

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c) Inter-agency coordination.

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) Width limitations.

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) Temporary permits.

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(f) Regulatory authority.

Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance use and termination.

(g) Pipeline safety.

The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

(h) Environmental protection.

(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 4332(2)(C) of Title 42 or any other provision of the National Environmental Policy Act of 1969.

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

(i) Disclosure.

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(j) Technical and financial capability.

The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.

(k) Public hearings.

The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

(l) Reimbursement of costs.

The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

(m) Bonding.

Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

(n) Duration of grant.

Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o) Suspension or termination of right-of-way.

(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to section 554 of Title 5, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year pe-

riod shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way.

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) Statutes.

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers.

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Interstate Commerce Commission or Federal Power Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforee such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Right-of-way corridors.

In order to minimize adverse environmental impacts and to prevent the proliferation of separate rights-of-way across Federal lands, the Secretary shall, in consultation with other Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and submit a report of his findings and recommendations to the Congress and the President by July 1, 1975.

(t) Existing rights-of-way.

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(2)(C) of Title 42.

(u) Limitations on export.

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or

the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1969 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1969: *Provided,* That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards.

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

(w) Reports.

(1) The Secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Interstate Commerce Commission any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.

(x) Liability.

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws.

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws. (As amended Nov. 16, 1973, Pub. L. 93–153, title I, § 101, 87 Stat. 576.)

AMENDMENTS

1973—Pub. L. 93–153 completely rewrote the section substituting 25 subsecs. lettered (a) through (y) covering all aspects of the granting of rights-of-way for pipelines through Federal lands for the former single unlettered paragraph under which rights-of-way of 25 feet on each side of the pipeline could be granted and under which the pipeline was to be operated as a common carrier.

52. Rural Development and Small Farm Research and Education

7 U.S.C. 2661–2668

§ 2661. Statement of purposes.

The purpose of this subchapter is to encourage and foster a balanced national development that provides opportunities for increased numbers of Americans to work and enjoy a high quality of life dispersed throughout our Nation by providing the essential knowledge necessary for successful programs of rural development. It is further the purpose of this subchapter—

(a) to provide multistate regional agencies, States, counties, cities, multicounty planning and development of districts, businesses, industries, organizations, Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups, and others involved with public services and investments in rural areas or that provide or may provide employment in these areas the best available scientific, technical, economic, organizational, environmental, and management information and knowledge useful to them, and to assist and encourage them in the interpretation and application of this information to practical problems and needs in rural development;

(b) to provide research and investigations in all fields that have as their purpose the development of useful knowledge and information to assist those planning, carrying out, managing, or investing in facilities, services, businesses, or other enterprises, public and private, that may contribute to rural development;

(c) to enhance the capabilities of colleges and universities to perform the vital public service roles of research, transfer, and practical application of knowledge in support of rural development;

(d) to expand research on innovative approaches to small farm management and technology and extend training and technical assistance to small farmers so that they may fully utilize the best available knowledge on sound economic approaches to small farm operations.

(Pub. L. 92–419, title V, § 501, Aug. 30, 1972, 86 Stat. 671.)

§ 2662. Programs authorization; cooperation and coordination with colleges and universities.

The Secretary of Agriculture (hereafter referred to as the "Secretary") is directed and authorized to conduct in cooperation and in coordination with colleges and universities the following programs to carry out the purposes of this subchapter.

(a) Rural development extension programs.

Rural development extension programs shall consist of the collection, interpretation, and dissemination of useful information and knowledge from research and other sources to units of multistate regional agencies, State, county, municipal, and other units of government, multicounty planning and development districts, organizations of citizens contributing to rural development, business, Indian tribes on Federal or State reservations or other federally recognized Indian tribal groups, or industries that employ or may employ people in rural areas. These programs also shall include technical services and educational activity, including instruction for persons not enrolled as students in colleges or universities, to facilitate and encourage the use and practical application of this information. These programs also may include feasibility studies and planning assistance.

(b) Rural development research.

Rural development research shall consist of research, investigations, and basic feasibility studies in any field or discipline which may develop principles, facts, scientific and technical knowledge, new technology, and other information that may be useful to agencies of Federal, State, and local government, industries in rural areas, Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups, and other organizations involved in rural development programs and activities in planning and carrying out such programs and activities or otherwise be practical and useful in achieving increased rural development.

(c) Small farm extension, research, and development programs.

Small farm extension and research and development programs shall consist of extension and research programs with respect to new approaches for small farms in management, agricultural production techniques, farm machinery technology, new products, cooperative agricultural marketing, and distribution suitable to the economic development of family size farm operations. (Pub. L. 92–419, title V, § 502, Aug. 30, 1972, 86 Stat. 671.)

§ 2663. Program moneys.

(a) Authorization of appropriations.

There are hereby authorized to be appropriated to carry out the purposes of this subchapter not to exceed $10,000,000 for the fiscal year ending June 30, 1974, not to exceed $15,000,000 for the fiscal year ending June 30, 1975, not to exceed $20,000,000 for the fiscal year ending June 30, 1976, not to exceed $5,000,000 for the period July 1, 1976, through September 30, 1976, and not to exceed $20,000,000 for each of the three fiscal years during the period beginning October 1, 1976, and ending September 30, 1979.

(b) Allocation of funds.

Such sums as the Congress shall appropriate to carry out the purposes of this subchapter pursuant to subsection (a) of this section shall be distributed by the Secretary as follows:

(1) 4 per centum to be used by the Secretary for Federal administration, national coordination, and program assistance to the States;

(2) 10 per centum to be allocated by the Secretary to States to finance work serving two or more States in which universities in two or more States cooperate or which is conducted by one university to serve two or more States;

(3) 20 per centum shall be allocated equally among the States;

(4) 66 per centum shall be allocated to each State, as follows: One-half in an amount which bears the same ratio to the total amount to be allotted as the rural population of the States bears to the total rural population of all the States as determined by the last preceding decennial census current at the time each such additional sum is first appropriated; and one-half in an amount which bears the same ratio to the total amount to be allotted as the farm population of the State bears to the total farm population of all the States as determined by the last preceding decennial census current at the time such additional sum is first appropriated.

(c) Use of funds.

Funds appropriated under this subchapter may be used to pay salaries and other expenses of personnel employed to carry out the functions authorized by this subchapter, to obtain necessary supplies, equipment, services, and rent, repair, and maintenance of other facilities needed, but may not be used to purchase or construct buildings.

(d) Contingencies for payment of funds; fiscal year availability; budget and accounting.

Payment of funds to any State for programs authorized under section 2662 (a), (b), and (c) of this title shall be contingent upon the Secretary's approval of an annual plan and budget for programs conducted under each part and compliance with such regulations as the Secretary may issue under this subchapter. Funds shall be available for use by the State in the fiscal year for which appropriated and the next fiscal year following the year for which appropriated. Funds shall be budgeted and accounted for on such forms and at such times as the Secretary shall prescribe.

(e) Financing programs at universities other than universities responsible for administration of programs.

Funds provided to each State under this subchapter may be used to finance programs through or at private and publicly supported colleges and universities other than the university responsible for administering the programs authorized by this subchapter. (Pub. L. 92–419, title V, § 503, Aug. 30, 1972, 86 Stat. 672; as amended Pub. L. 94–259, § 1, Apr. 5, 1976, 90 Stat. 314.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–259 authorized appropriations from July 1, 1976 through Sept. 30, 1979.

§ 2664. Cooperating colleges and universities.

(a) Coordinated State program.

Each of the programs authorized by this subchapter shall be organized and conducted by one or more colleges or universities in each State so as to provide a coordinated program in each State.

(b) State program administration; payment of funds.

To assure national coordination with programs under the Smith-Lever Act of 1914 and the Hatch Act (as amended, August 11, 1955), administration of each State program shall be a responsibility of the institution or university accepting the benefits of the Morrill Act of 1862 (12 Stat. 503) as amended. Such administration shall be in association with the programs conducted under the Smith-Lever Act and the Hatch Act. The Secretary shall pay funds available to each State to said institution or university.

(c) Institutions eligible for programs; program proposals; approval.

All private and publicly supported colleges and universities in a State including the land-grant colleges of 1890 (26 Stat. 417) shall be eligible to conduct or participate in conducting programs authorized under this subchapter. Officials at universities or colleges other than those responsible for administering programs authorized by this subchapter who wish to participate in these programs shall submit program proposals to the university officials responsible for administering these programs and they shall be responsible for approval of said proposals.

(d) Officials; designation for State program administration.

The university in each State responsible for administering the program authorized by this subchapter shall designate an official who shall be responsible for programs authorized by each part of section 2662 of this title and an official who shall be responsible for the overall coordination of said programs.

(e) State Rural Development Advisory Council; appointment; membership; chairman; engineering member; representation of interests; function of Council.

The chief administrative officer of the university in each State responsible for administering the program authorized by this subchapter shall appoint a State Rural Development Advisory Council, consisting of not more than fifteen members. The administrative head of agriculture of that university shall serve as chairman. The administrative head of a principal school of engineering in the State shall be a member. There shall be at least ten additional members who shall include persons representing farmers, business, labor, banking, local government, multicounty planning and development districts, public and private colleges and Federal and State agencies involved in rural development.

It shall be the function of the Council to review and approve annual program plans conducted under this subchapter and to advise the chief administrative officer of the university on matters pertaining to the program authorized. (Pub. L. 92–419, title V, § 504, Aug. 30, 1972, 86 Stat. 673.)

§ 2665. Agreements and plans.

(a) Memorandum of understanding.

Programs authorized under this subchapter shall be conducted as mutually agreed upon by the Secretary and the university responsible for administering said programs in a memorandum of understanding which shall provide for the coordination of the programs authorized under this subchapter, coordination of these programs with other rural development programs of Federal, State, and local government, and such other matters as the Secretary shall determine.

(b) Annual program plan.

Annually said university shall submit to the Sec-

retary an annual program plan for programs authorized under this subchapter which shall include plans for the programs to be conducted by each cooperating and participating university or college and such other information as the Secretary shall prescribe. Each State program must include research and extension activities directed toward identification of programs which are likely to have the greatest impact upon accomplishing the objectives of rural development in both the short and longer term and the use of these studies to support the State's comprehensive program to be supported under this subchapter. (Pub. L. 92–419, title V, § 505, Aug. 30, 1972, 86 Stat. 673.)

§ 2666. Withholding funds; report to President; separate account in Treasury; State appeal to Congress; covering moneys into Treasury; State money replacement.

When the Secretary determines that a State is not eligible to receive part or all of the funds to which it is otherwise entitled because of a failure to satisfy conditions specified in this subchapter, or because of a failure to comply with regulations issued by the Secretary under this subchapter, the facts and reasons therefor shall be reported to the President, and the amount involved shall be kept separate in the Treasury until the expiration of the Congress next succeeding a session of the legislature of the State from which funds have been withheld in order that the State may, if it should so desire, appeal to Congress from the determination of the Secretary. If the next Congress shall not direct such sum to be paid, it shall be covered into the Treasury. If any portion of the moneys received by the designated officers of any State for the support and maintenance of programs authorized by this subchapter shall by any action or contingency be diminished or lost, or be misapplied, it shall be replaced by said State. (Pub. L. 92–419, title V, § 506, Aug. 30, 1972, 86 Stat. 674.)

§ 2667. Definitions.

For the purposes of this subchapter—

(a) "Rural development" means the planning, financing, and development of facilities and services in rural areas that contribute to making these areas desirable places in which to live and make private and business investments; the planning, development, and expansion of business and industry in rural areas to provide increased employment and income; the planning, development, conservation, and use of land, water, and other natural resources of rural areas to maintain or enhance the quality of the environment for people and business in rural areas; and processes and procedures that have said objectives as their major purposes.

(b) The word "State" means the several States and the Commonwealth of Puerto Rico. (Pub. L. 92–419, title V, § 507, Aug. 30, 1972, 86 Stat. 674.)

§ 2668. Regulations.

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this subchapter. (Pub. L. 92–419, title V, § 508, Aug. 30, 1972, 86 Stat. 674.)

53. Rural Environmental Conservation Program

7 U.S.C. 1501–1510

Sec.

Sec.

§ 1501. Establishment and purpose of programs; contracting and purchasing authority of Secretary; maintenance of continuing and stable supply of agricultural commodities and forest products.

Notwithstanding any other provision of law the Secretary shall carry out the purposes specified in clauses (1), (2), (3), (4), and (6) of section 590g(a) of this title, section 590p(b) of this title, and in the Water Bank Act by entering into contracts of three, five, ten, or twenty-five years with, and at the option of, eligible owners and operators of land as determined by the Secretary and having such control as the Secretary determines to be needed on the farms, ranches, wetlands, forests, or other lands covered thereby. In addition, the Secretary is hereby authorized to purchase perpetual easements to promote said purpose of this chapter, including the sound use and management of flood plains, shore lands, and aquatic areas of the Nation. Such contracts shall be designed to assist farm, ranch, wetland, and nonindustrial private forest owners and operators, or other owners or operators, to make, in orderly progression over a period of years, such changes, if any, as are needed to effectuate any of the purposes specified in

clauses (1), (2), (3), (4), and (6) of section 590g(a) of this title; section 590p(b) of this title; the Water Bank Act; in enlarging fish and wildlife and recreation sources; in improving the level of management of nonindustrial private forest lands; and in providing long-term wildlife and upland game cover. In carrying out the provisions of this chapter, due regard shall be given to the maintenance of a continuing and stable supply of agricultural commodities and forest products adequate to meet consumer demand at prices fair to both producers and consumers. (Pub. L. 91–524, title X, § 1001, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 241, and amended Pub. L. 93–125, § 1(g)(i), Oct. 18, 1973, 87 Stat. 450.)

AMENDMENTS

1973—Pub. L. 93–125 provided for corrective changes in format of this section by transferring pars. (1) to (4) to section 1503(a) of this title, which, as originally enacted, contained pars. (5) and (6) but failed to contain pars. (1) to (4). See section 1503(a) of this title.

§ 1502. Plan of farming operations or land use; necessity for contract applicants to furnish Secretary; contents of plan.

Eligible landowners and operators for contracts under this chapter shall furnish to the Secretary a plan of farming operations or land use which incorporates such practices and principles as may be determined by him to be practicable and which outlines a schedule of proposed changes, if any, in cropping systems or land use and of the conservation measures which are to be carried out on the farm, ranch, wetland, forests, or other land during the contract period to protect the farm, ranch, wetland, forests or other land and surrounding areas, its wildlife, and nearby populace and communities from erosion, deterioration, pollution by natural and manmade causes or to insure an adequate supply of timber and related forest products. Said plans may also, in important migratory waterfowl nesting and breeding areas which are identified in a conservation plan developed in cooperation with a soil and water conservation district in which the lands are located, and under such rules and regulations as the Secretary may provide, include a schedule of proposed changes, if any, to conserve surface waters and preserve and improve habitat for migratory waterfowl and other wildlife resources and improve subsurface moisture, including, subject to the provisions of section 1501 of this title, the reduction of areas of new land coming into production, the enhancement of the natural beauty of the landscape, and the promotion of comprehensive and total water management study. (Pub. L. 91–524, title X, § 1002, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 242.)

§ 1503. Contracts.

(a) Approved conservation plans as basis; duties of landowner or operator under contracts.

Approved conservation plans of eligible landowners and operators developed in cooperation with the soil and water conservation district or the State forester or other appropriate State official in which their lands are situated shall form a basis for contracts under this chapter. Under the contract the landowner or operator shall agree—

(1) to effectuate the plan for his farm, ranch, forest, wetland, or other land substantially in accordance with the schedule outlined therein;

(2) to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder upon his violation of the contract at any stage during the time he has control of the land if the Secretary, after considering the recommendations of the Soil and Water Conservation District Board, or the State forester or other appropriate official in a contract entered into under the provisions of section 1509 of this title, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the contract;

(3) upon transfer of his right and interest in the farm, ranch, forest, wetland, or other land during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

(4) not to adopt any practice specified by the Secretary in the contract as a practice which would tend to defeat the purposes of the contract;

(5) to comply with all applicable Federal, State, or local laws, and regulations, including those governing environmental protection and noxious weed abatement; and

(6) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of the program or to facilitate the practical administration of the program: *Provided*, That all contracts entered into to effectuate the purposes of the Water Bank Act for wetlands shall contain the further agreement of the owner or operator that he shall not drain, burn, fill, or otherwise destroy the wetland character of such areas, nor use such areas for agricultural purposes: *And provided further*, That contracts entered into for the protection of wetlands to effectuate the purposes of the Water Bank Act may include wetlands covered by Federal or State government easement which permits agricultural use, together with such adjacent areas as determined desirable by the Secretary.

(b) Duties of Secretary under contracts; shared costs.

In return for such agreement by the landowner or operator the Secretary shall agree to make payments in appropriate circumstances for the use of land maintained for conservation purposes as set forth in this chapter, and share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost-sharing is appropriate and in the public interest. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the physical installation of the conservation practices and measures under the contract, but, in the case of a contract not entered into under an advertising

and bid procedure under the provisions of section 1509(d) of this title, not less than 50 per centum or more than 75 per centum of the actual costs incurred by the owner or operator.

(c) Termination and modification of contracts.

The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other similar conservation, land use, or commodity programs administered by the Secretary. (Pub. L. 91–524, title X, § 1003, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 242, and amended Pub. L. 93–125, § 1(g)(1), Oct. 18, 1973, 87 Stat. 450.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–125 provided for corrective changes in format, which as originally enacted, contained pars. (5) and (6) but failed to contain pars. (1) to (4), by transferring from section 1501 of this title pars. (1) to (4) as set out herein.

§ 1504. Authority of Secretary to furnish eligible owners and operators conservation materials, etc.

The Secretary is authorized to make available to eligible owners and operators conservation materials including seeds, seed inoculants, soil conditioning materials, trees, plants, and, if he determines it is appropriate to the purposes of this chapter, fertilizer and liming materials. (Pub. L. 91–524, title X, § 1004, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 243.)

§ 1505. Multiyear set-aside contracts; contracting authority of Secretary; duration of contracts; eligibility of producers; duties of producers under contracts; cost-sharing incentives for farm operators.

(a) Notwithstanding the provisions of any other title, the Secretary may establish multiyear set-aside contracts for a period not to extend beyond the 1977 crop. Such contracts may be entered into only as a part of the programs in effect for wheat, feed grains, and cotton for the years 1974 through 1978, and only producers participating in one or more of such programs shall be eligible to contract with the Secretary under this section. Producers agreeing to a multiyear set-aside agreement shall be required to devote this acreage to vegetative cover capable of maintaining itself throughout such period to provide soil protection, water quality enhancement, wildlife production, and natural beauty. Grazing of livestock under this section shall be prohibited. Producers entering into agreements under this section shall also agree to comply with all applicable State and local law and regulation governing noxious weed control.

(b) The Secretary shall provide cost-sharing incentives to farm operators for such cover establishment, whenever a multiyear contract is entered into on all or a portion of the set-aside acreage. (Pub. L. 91–524, title X, § 1005, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 243.)

§ 1506. Rules and regulations; limitations on total acreage retired from production pursuant to contracts.

The Secretary shall issue such regulations as he determines necessary to carry out the provisions of this chapter. The total acreage placed under agreements which result in their retirement from production in any county or local community shall in addition to the limitations elsewhere in this chapter be limited to a percentage of the total eligible acreage in such county or local community which the Secretary determines would not adversely affect the economy of the county or local community. In determining such percentage the Secretary shall give appropriate consideration to the productivity of the acreage being retired, if any, as compared to the average productivity of eligible acreage in such county or local community which the Secretary determines would not adversely affect the economy of the county or local community. (Pub. L. 91–524, title X, § 1006, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 244.)

§ 1507. Advisory boards.

(a) State boards; functions; membership; appointment and qualifications of members; meetings.

The Secretary of Agriculture shall appoint an advisory board in each State to advise the State committee of that State (established under section 590h(b) of this title) regarding the types of conservation measures that should be approved to effectuate the purposes of this chapter. The Secretary shall appoint at least six individuals to the advisory board of each State who are especially qualified by reason of education, training, and experience in the fields of agriculture, soil, water, wildlife, fish, and forest management. The advisory board appointed for any State shall meet at least once each calendar year. Said appointed members shall include, but not be limited to the State soil conservationist, the State forester, the State administrator of the water quality programs, and the State wildlife administrator or their designees: *Provided,* That such board shall limit its advice to the State committees to the types of conservation measures that should be approved affecting the water bank program; the authorization to purchase perpetual easements to promote the purposes of this chapter, as described in section 1501 of this title; the providing of long-term upland game cover; and the establishment and management of approved practices on multiyear set-aside contracts as provided in section 1505 of this title.

(b) National board; establishment in consultation with Secretary of Interior; functions and duties.

The Secretary of Agriculture, through the establishment of a national advisory board to be named in consultation with the Secretary of the Interior, shall seek the advice and assistance of the appropriate officials of the several States in developing the programs under this chapter, especially in developing guidelines for (1) providing technical assistance for wildlife habitat improvement practices, (2) evaluating effects on surrounding areas, (3) considering aesthetic values, (4) checking compliance by cooperators, and (5) carrying out programs of wildlife management authorized under this chapter: *Provided,* That such board shall limit its advice to sub-

jects which cover the types of conservation measures that should be approved regarding the water bank program; the authorization to purchase perpetual easements to promote the purposes of this Act, as described in section 1501 of this title; the providing of long-term upland game cover; and the establishment and management of approved practices on multiyear set-aside contracts as provided in section 1505 of this title. (Pub. L. 91–524, title X, § 1007, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 244, and amended Pub. L. 93–125, § 1(g)(ii), Oct. 18, 1973, 87 Stat. 450.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–125 substituted "section 1505 of this title." for "section 1505 of this title:".

§ 1508. Coordination with and utilization by Secretary of Federal, State, and local services and facilities to carry out programs and plans.

In carrying out the programs authorized under sections 1501 through 1506 of this title, the Secretary shall, in addition to appropriate coordination with other interested Federal, State, and local agencies, utilize the services of local, county, and State committees established under section 590h of this title. The Secretary is also authorized to utilize the facilities and services of the Commodity Credit Corporation in discharging his functions and responsibilities under this program. The Secretary shall also utilize the technical services of the Soil Conservation Service, the Forest Service, State forestry organizations, soil and water conservation districts, and other State, and Federal agencies, as appropriate, in development and installation of approved conservation plans under this chapter. (Pub. L. 91–524, title X, § 1008, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 244.)

§ 1509. Forestry incentives program.

(a) Establishment and purposes of program.

In furtherance of the purposes of this chapter, the Secretary of Agriculture is authorized and directed to develop and carry out a forestry incentives program to encourage the development, management, and protection of nonindustrial private forest lands. The purposes of such a program shall be to encourage landowners to apply practices which will provide for the afforestation of suitable open lands and reforestation of cutover and other nonstocked and understocked forest lands and intensive multiple-purpose management and protection of forest resources so as to provide for production of timber and related benefits.

(b) Definition.

For the purposes of this section, the term "nonindustrial private forest lands" means lands capable of producing crops of industrial wood and owned by any private individual, group, association, corporation, or other legal entity. Such term does not include private entities which regularly engage in the business of manufacturing forest products or providing public utilities services of any type, or the subsidiaries of such entities.

(c) Consultations by Secretary; criteria for distribution of funds by Secretary for cost-sharing; approval of contracts for tracts greater than 500 acres.

The Secretary shall consult with the State forester or other appropriate official of the respective States in the conduct of the forestry incentives program under this section, and Federal assistance shall be extended in accordance with section 1503(b) of this title. The Secretary shall for the purposes of this section distribute funds available for cost sharing among and within the States only after assessing the public benefit incident thereto, and after giving appropriate consideration to the number and acreage of commercial forest lands, number of eligible ownerships in the State, and counties to be served by such cost sharing; the potential productivity of such lands; and the need for reforestation, timber stand improvement, or other forestry investments on such land. No forest incentives contract shall be approved under this section on a tract greater than five hundred acres, unless the Secretary finds that significant public benefit will be incident to such approval.

(d) Advertising and bid procedure for contracts.

The Secretary may, if he determines that such action will contribute to the effective and equitable administration of the program established by this section, use an advertising and bid procedure in determining the lands in any area to be covered by agreements.

(e) Implementation of program; periodic reports to appropriate Congressional committees.

In implementing the program under this section, the Secretary will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms, and individuals furnishing services and materials needed in the application of practices included in the forestry incentives improvement program. The Secretary shall periodically report to the appropriate congressional committees of the progress and conduct of the program established under this section. (Pub. L. 91–524, title X, § 1009, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 245.)

§ 1510. Authorization of appropriations; construction and continuation of programs, contracts, and authorities; limitation on authorization of appropriation for forestry incentives program.

There are hereby authorized to be appropriated annually such sums as may be necessary to carry out the provisions of this chapter. The programs, contracts, and authority authorized under this chapter shall be in addition to, and not in substitution for, other programs in such areas authorized by this chapter or any other title or Act, and shall not expire with the termination of any other title or Act: *Provided*, That not more than $25,000,000 annually shall be authorized to be appropriated for the programs authorized under section 1509 of this title. (Pub. L. 91–524, title X, § 1010, as added Pub. L. 93–86, § 1(28), Aug. 10, 1973, 87 Stat. 245.)

54. Soil Conservation

16 U.S.C. 590a–590p–1

Sec.

* * * * *

§ 590a. Prevention of soil erosion; surveys and investigations; preventive measures; cooperation with agencies and persons; acquisition of land.

It is recognized that the wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relieve unemployment, and the Secretary of Agriculture, from now on, shall coordinate and direct all activities with relation to soil erosion and in order to effectuate this policy is authorized, from time to time—

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive measures needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water;

(2) To carry out preventive measures, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land;

(3) To cooperate or enter into agreements with, or to furnish financial or other aid to, any agency, governmental or otherwise, or any person, subject to such conditions as he may deem necessary, for the purposes of this chapter; and

(4) To acquire lands, or rights or interests therein, by purchase, gift, condemnation, or otherwise, whenever necessary for the purposes of this chapter.

(Apr. 27, 1935, ch. 85, § 1, 49 Stat. 163.)

§ 590b. Lands on which preventive measures may be taken.

The acts authorized in section 590a (1) and (2) of this title may be performed—

(a) On lands owned or controlled by the United States or any of its agencies, with the cooperation of the agency having jurisdiction thereof; and

(b) On any other lands, upon obtaining proper consent or the necessary rights or interests in such lands. (Apr. 27, 1935, ch. 85, § 2, 49 Stat. 163.)

§ 590c. Conditions under which benefits of law extended nongovernment controlled lands.

As a condition to the extending of any benefits under this chapter to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of this chapter, require—

(1) The enactment and reasonable safeguards for the enforcement of State and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for the prevention of soil erosion;

(2) Agreements or covenants as to the permanent use of such lands; and

(3) Contributions in money, services, materials, or otherwise, to any operations conferring such benefits.

(Apr. 27, 1935, ch. 85, § 3, 49 Stat. 163.)

§ 590d. Cooperation of governmental agencies; officers and employees, appointment and compensation; expenditures for personal services and supplies.

For the purposes of this chapter, the Secretary of Agriculture may—

(1) Secure the cooperation of any governmental agency;

(2) Subject to the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of Title 5, appoint and fix compensation of such officers and employees as he may deem necessary, except for a period not to exceed eight

months from the date of this enactment, the Secretary of Agriculture may make appointments and may continue employees of the organization heretofore established for the purpose of administering those provisions of the National Industrial Recovery Act which relate to the prevention of soil erosion, without regard to the civil-service laws or regulations and chapter 51 and subchapter III of chapter 53 of Title 5, and any persons with technical or practical knowledge may be employed and compensated under this chapter on a basis to be determined by the Civil Service Commission; and

(3) Make expenditures for personal services and rent in the District of Columbia and elsewhere, for the purchase of law books and books of reference, for printing and binding, for the purchase, operation, and maintenance of passenger-carrying vehicles, and perform such acts, and prescribe such regulations, as he may deem proper to carry out the provisions of this chapter. (Apr. 27, 1935, ch. 85, § 4, 49 Stat. 164; Oct. 8, 1949, ch. 782, title XI, § 1106 (a), 63 Stat. 972.)

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923," which for purposes of codification has been translated as chapter 51 and subchapter III of chapter 53 of Title 5.

§ 590e. Soil Conservation Service; establishment; utilization and transfer of existing governmental agencies.

The Secretary of Agriculture shall establish an agency to be known as the "Soil Conservation Service", to exercise the powers conferred on him by this chapter and may utilize the organization heretofore established for the purpose of administering those provisions of sections 202 and 203 of the National Industrial Recovery Act which relate to the prevention of soil erosion, together with such personnel thereof as the Secretary of Agriculture may determine, and all unexpended balances of funds heretofore allotted to said organization shall be available until June 30, 1937, and the Secretary of Agriculture shall assume all obligations incurred by said organization prior to transfer to the Department of Agriculture. In order that there may be proper coordination of erosion-control activities the Secretary of Agriculture may transfer to the agency created under this chapter such functions, funds, personnel, and property of other agencies in the Department of Agriculture as he may from time to time determine. (Apr. 27, 1935, ch. 85, § 5, 49 Stat. 164.)

§ 590f. Appropriation authorized.

There are authorized to be appropriated for the purposes of this chapter such sums as Congress may from time to time determine to be necessary.

Appropriations for carrying out this chapter allocated for the production or procurement of nursery stock by any Federal agency, or funds appropriated to any Federal agency for allocation to cooperating States for the production or procurement of nursery stock, shall remain available for expenditure for not more than three fiscal years. (Apr. 27, 1935, ch. 85, § 6, 49 Stat. 164; Sept. 21, 1944, ch. 412, title III, § 302 (a), 58 Stat. 738.)

AMENDMENTS

1944—Act Sept. 21, 1944, added par. beginning "Appropriations for carrying".

§ 590g. Additional policies and purposes of chapter.

(a) Purposes enumerated.

It is declared to be the policy of this chapter also to secure, and the purposes of this chapter shall also include, (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; (5) reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms that prevailed during the five-year period August 1909–July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio; and (6) prevention and abatement of agricultural-related pollution. The powers conferred under this section and sections 590h, 590i, and 590j to 590n of this title shall be used to assist voluntary action calculated to effectuate the purposes specified in this section. Such powers shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary from the records of domestic human consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodity that were forced into domestic consumption by decline in exports during such period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities. In carrying out the purposes of this section due regard shall be given to the maintenance of a continuous and stable supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers.

(b)—(g) Repealed. Pub. L. 87–703, title I, § 101(1), Sept. 27, 1962, 76 Stat. 605.

(Apr. 27, 1935, ch. 85, § 7, as added Feb. 29, 1936, ch. 104, § 1, 49 Stat. 1148, and amended June 28, 1937, ch. 395, § 1, 50 Stat. 329; Sept. 27, 1962, Pub. L. 87–703, title I, § 101(1), 76 Stat. 605.)

(As amended Aug. 30, 1972, Pub. L. 92–419, title VI, § 606(1), 86 Stat. 676.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–419 added cl. (6).

1962—Subsecs. (b)—(g). Pub. L. 87–703 repealed subsecs. (b)—(g) which provided for State plans as follows: subsec. (b), cooperation with States by making grants; subsec. (c), State plans; subsec. (d), conditions of plans; subsec. (e), approval of plans; subsec. (f), allocation of funds; and subsec. (g), apportionment of funds.

1937—Subsec. (g). Act June 28, 1937, substituted "any such apportionment of funds available for carrying out

State plans during any year prior to 1942 may be made at any time prior to or during the year to which such plans relate" for "apportionments of funds available for carrying out the purposes specified in this section for the year 1936 may be made at any time during 1936, and apportionments for 1937 may be made at any time during 1937".

§ 590g–1. Allocation for county agricultural conservation program; amount withheld; use; deposit of funds.

CODIFICATION

Section, acts July 5, 1952, ch. 574, title I, § 101, 66 Stat. 347; July 28, 1953, ch. 251, title I, § 101, 67 Stat. 216, which related to allocations to the Soil Conservation Service for services of its technicians in formulating and carrying out the agricultural conservation program in the participating counties, was apparently restricted to the appropriation acts of which in each case it was a part, and has been omitted from the code.

§ 590g–2. Allocation for State agricultural conservation program; amount withheld; use.

Not to exceed 2½ per centum of the allocation for the agricultural conservation program for any State may be utilized in determining the most needed conservation practices on individual farms for which Federal assistance shall be given. (July 5, 1952, ch. 574, title I, § 101, 66 Stat. 347.)

§ 590h. Payments and grants of aid.

(a) Repealed. Pub. L. 87–703, title I, § 101(2), Sept. 27, 1962, 76 Stat. 605.

(b) Payments and grants of aid; local, county, State committees; rules and regulations; rural environmental protection contracts: terms and conditions, period, modification or termination.

The Secretary shall have power to carry out the purposes specified in clauses (1), (2), (3), (4), (5), and (6) of section 590g(a) of this title by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts determined by the Secretary to be fair and reasonable in connection with the effectuation of such purposes during the year with respect to which such payments or grants are made, and measured by (1) their treatment or use of their land, or a part thereof, for soil restoration, soil conservation, the prevention of erosion, or the prevention or abatement of agriculture-related pollution; (2) changes in the use of their land; (3) their equitable share, as determined by the Secretary, of the normal national production of any commodity or commodities required for domestic consumption; (4) their equitable share, as determined by the Secretary, of the national production of any commodity or commodities required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland on the farm conforms to farming practices which the Secretary determines will best effectuate the purposes specified in section 590f(a) of this title; or (5) any combination of the above. Clauses (1) and (2) above shall be construed to cover water conservation and the beneficial use of water on individual farms, including measures to prevent run-off, the building of check dams and ponds, and providing facilities for applying water to the land. In determining the amount of any payment or grant measured by (1) or (2) the Secretary shall take into consideration the productivity of the land affected by the farming practices adopted during the year with respect to which such payment is made. In carrying out the provisions of this section in the States of the Union, except Alaska, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this section. No such local area shall include more than one county or parts of different counties. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect annually from among their number a local committee of not more than three members for such area. The members of the local committees shall, in a county convention, nominate and elect a county committee which shall consist of three members who are farmers in the county. At the first county convention held on or after January 1, 1965, one member of the county committee shall be elected for one year; one member shall be elected for two years; and one member shall be elected for three years. Thereafter, each member of a county committee shall be elected for a term of three years. No member of the county committee shall be elected for more than three consecutive terms (exclusive of any term which began prior to January 1, 1965). The local committee shall select a secretary and may utilize the county agricultural extension agent for such purpose. The county committee shall select a secretary who may be the county agricultural extension agent. If such county agricultural extension agent shall not have been elected secretary of such committee, he shall be ex officio a member of the county committee. The county agricultural extension agent shall not have the power to vote. In any county in which there is only one local committee the local committee shall also be the county committee. In each State there shall be a State committee for the State composed of not less than three or more than five farmers who are legal residents of the State and who are appointed by the Secretary. The State director of the Agricultural Extension Service shall be ex officio a member of such State committee. The ex officio members of the county and State committees shall be in addition to the number of members of such committees hereinbefore specified. The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs. In carrying out the provisions of this section, the Secretary shall, as far as practicable, protect the interests of tenants and sharecroppers; is authorized to utilize the agricultural extension service and other approved agencies; shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress and as will tend to promote efficient methods of marketing and distribution; shall not have power to acquire any land or any right or interest therein; shall, in every practicable manner, protect the interests of small producers; and shall in every practical way encourage and provide for soil-conserving and soil-rebuilding practices rather than the growing of

soil-depleting crops. Rules and regulations governing payments or grants under this subsection shall be as simple and direct as possible, and, wherever practicable, they shall be classified on two bases: (a) Soil-depleting crops and practices, (b) soil-building crops and practices.

Notwithstanding any other provision of law, in making available conservation materials consisting of seeds, seed inoculants, fertilizers, liming and other soil-conditioning materials, trees, or plants, or in making available soil-conserving and soil-building services or pollution prevention or abatement aids, to agricultural producers under this subsection, the Secretary may make payments, in advance of determination of performance by the producers, to persons who will purchase orders covering approved conservation materials or covering soil-conserving or soil-building services or pollution prevention or abatement aids, furnished to producers, or who render services to the Secretary in delivering to producers approved conservation materials, for the carrying out, by the producers, of soil-building or soil-conserving practices or pollution prevention or abatement practices approved by the Secretary. The price at which purchase orders for any conservation materials or services are filled may be limited to a fair price fixed in accordance with regulations prescribed by the Secretary.

Appropriations are authorized for the purchase in advance of the program year for which the appropriation is made of seeds, fertilizers, lime, trees, or any other farming materials or any soil-terracing services, and making grants thereof to agricultural producers to aid them in carrying out farming practices approved by the Secretary in programs under this chapter; for the reimbursement of any Federal, State, or local government agency for fertilizers, seeds, lime, trees, or other farming materials, or any soil-terracing services, furnished by such agency; and for the payment of all expenses necessary in making such grants, including all or part of the costs incident to the delivery thereof.

In carrying out the purposes of subsection (a) of section 590g of this title, the Secretary may enter into agreements with agricultural producers for periods not to exceed ten years, on such terms and conditions as the Secretary deems desirable, creating obligations in advance of appropriations not to exceed such amounts as may be specified in annual appropriation Acts. Such agreements (i) shall be based on conservation plans approved by the soil and water conservation district or districts in which the lands described in the agreements are situated, and (ii) may be modified or terminated by mutual consent if the Secretary determines such action would be in the public interest. The Secretary also may terminate agreements if he determines such action to be in the national interest and provides public notice in ample time to give producers a reasonable opportunity to make arrangements for appropriate changes in the use of their land.

(c) Apportionment of acreage allotments.

(1) In apportioning acreage allotments under this section in the case of wheat and corn, the National and State allotments and the allotments to counties shall be apportioned annually on the basis of the acreage seeded for the production of the commodity during the ten calendar years immediately preceding the calendar year in which the national acreage allotment is determined (plus, in applicable years, the acreage diverted under previous agricultural adjustment and conservation programs), with adjustments for abnormal weather conditions and trends in acreage during the applicable period.

(2) In the case of wheat, the allotment to any county shall be apportioned annually by the Secretary, through the local committees, among the farms within such county on the basis of tillable acres, crop-rotation practices, type of soil, and topography. Not more than 3 per centum of such county allotment shall be apportioned to farms on which wheat has not been planted during any of the three marketing years immediately preceding the marketing year in which the allotment is made. Notwithstanding any other provision of this section, the allotments established, or which would have been established, for any farm acquired in 1940 or thereafter by the United States for national-defense purposes shall be placed in an allotment pool and shall be used only to establish allotments for other farms owned or acquired by the owner of the farm so acquired by the United States. The allotments so made for any farm, including a farm on which wheat has not been planted during any of the three marketing years preceding the marketing year in which the allotment is made, shall compare with the allotments established for other farms in the same area which are similar except for the past acreage of wheat.

(3) In the case of corn, the allotment to any county shall be apportioned annually by the Secretary, through the local committees, among the farms within such county on the basis of tillable acreage, type of soil, topography, and crop-rotation practices.

(4) Repealed. Apr. 10, 1939, ch. 48, 53 Stat. 573.

(5) In determining normal yield per acre for any county under this section in the case of wheat or corn, the normal yield shall be the average yield per acre therein for such commodity during the ten calendar years immediately preceding the calendar year in which such yield is determined, adjusted for abnormal weather conditions and trends in yields. If for any reason there is no actual yield, or the data therefor are not available for any year, then an appraised yield for such year, determined in accordance with regulations of the Secretary, shall be used. If, on account of drought, flood, insect pests, plant disease, or other uncontrollable natural cause, the yield in any year of such ten-year period is less than 75 per centum of the average (computed without regard to such year), such year shall be eliminated in calculating the normal yield per acre. Such normal yield per acre for any county need be redetermined only when the actual average yield for the ten calendar years immediately preceding the calendar year in which such yield is being reconsidered differs by at least 5 per centum from the actual average yield for the ten years upon which the existing normal yield per acre for the county was based.

(6) In determining normal yield per acre for any farm under this section in the case of wheat or corn, the normal yield shall be the average yield per acre thereon for such commodity during the ten calendar years immediately preceding the calendar year in which such yield is determined, adjusted for abnormal weather conditions and trends in yields. If for any such year the data are not available, or there is no actual yield, then the normal yield for the farm shall be appraised in accordance with regulations of the Secretary, taking into consideration abnormal weather conditions, the normal yield for the county, and the yield in years for which data are available.

(d) Conditions affecting payments or grants of aid.

Any payment or grant of aid made under subsection (b) shall be conditioned upon the utilization of the land, with respect to which such payment is made, in conformity with farming practices which the Secretary finds tend to effectuate any one or more of the purposes specified in clauses (1)—(4), (5), or (6) of section 590g(a) of his title.

Any payment made under subsection (b) with respect to any farm (except for lands which the Secretary determines should not be utilized for the harvesting of crops but should be permanently used for grazing purposes only) shall, if the number of cows kept on such farm, and in the county in which such farm is located, for the production of milk or products thereof (for market), exceeds the normal number of such cows, be further conditioned upon the utilization of the land, with respect to which such payment is made, so that soil-building and soil-conserving crops planted or produced on an acreage equal to the land normally used for the production of soil-depleting crops but, as a condition of such payment, not permitted to be so used, shall be used for the purpose of building and conserving the fertility of the soil, or for the production of agricultural commodities to be consumed on the farm, and not for market. Whenever it is determined that a county, as a whole, is in substantial compliance with the provisions of this paragraph, no payment shall be denied any individual farmer in the county by reason of this paragraph; and no payment shall be denied a farmer by reason of this paragraph unless it has been determined that the farmer has not substantially complied with the provisions of this paragraph. Whenever the Secretary finds that by reason of drought, flood, or other disaster, a shortage of feed exists in any area, he shall so declare, and to the extent and for the period he finds necessary to relieve such shortage, the operation of the condition provided in this paragraph shall be suspended in such area and, if necessary to relieve such shortage, in other areas defined by him. As used in this paragraph, the term "for market" means for disposition by sale, barter, or exchange, or by feeding (in any form) to dairy livestock which, or the products of which, are to be sold, bartered, or exchanged; and such term shall not include consumption on the farm. An agricultural commodity shall be deemed consumed on the farm if consumed by the farmer's family, employees, or household, or if fed to poultry or livestock other than dairy livestock on his farm; or if fed to dairy livestock on his farm and such dairy livestock, or the products thereof, are to be consumed by his family, employees, or household. Whenever the Secretary has reason to believe the income of producers of livestock (other than dairy cattle) or poultry in any area from such sources is being adversely affected by increases in the supply for market of such livestock or poultry, as the case may be, arising as a result of programs carried out under this chapter, he shall make an investigation with respect to the existence of such facts. If, upon investigation, the Secretary finds that the income of producers of such livestock or poultry, as the case may be, in any area from any such source is being adversely affected by such increases, he shall, as soon as practicable, make such provisions in the administration of this chapter, with respect to the use of diverted acres as he may find necessary to protect the interests of producers of such livestock or poultry in the affected area.

(e) Distribution of payments among landlords, tenants, and sharecroppers.

Payments made by the Secretary to farmers under subsection (b) of this section shall be divided among the landlords, tenants, and sharecroppers of any farm, with respect to which such payments are made, in the same proportion that such landlords, tenants, and sharecroppers are entitled to share in the proceeds of the agricultural commodity with respect to which such payments are made, or, effective with respect to the 1942 and subsequent farm programs, in the event of acquisition of title to, or lease of, any farm for use in connection with the national war effort which caused the producers on such farms to lose, prior to the time of harvest, their interests in the crops planted thereon, or the proceeds thereof, payments with respect to such crops, to the extent that full compensation for the loss of payments with respect thereto in connection with such acquisition or lease was not made to such producers, shall be divided among the landlords, tenants, and sharecroppers on such farm in the proportion which it is determined that such producers would have been entitled to share in the proceeds of such crops but for such acquisition or lease: *Provided*, That payments based on soil-building or soil-conserving practices or agriculture-related pollution prevention or abatement practices shall be divided in proportion to the extent which such landlords, tenants, and sharecroppers contribute to the carrying out of such practices. Such payments shall be paid by the Secretary directly to the landlords, tenants, or sharecroppers entitled thereto, and shall be computed at rates which will permit the Secretary to set aside out of the funds available for the making of such payments for each year an amount sufficient to permit the increases herein specified to be made within the limits of the funds so available. If with respect to any farm the total payment to any person for any year would be:

(1) Not more than $20, the payment shall be increased by 40 per centum;

(2) More than $20 but not more than $40, the payment shall be increased by $8, plus 20 per centum of the excess over $20;

(3) More than $40 but not more than $60, the payment shall be increased by $12, plus 10 per centum of the excess over $40;

(4) More than $60 but not more than $186, the payment shall be increased by $14; or

(5) More than $186 but less than $200, the payment shall be increased to $200.

In the case of payments of more than $1, the amount of the payment which shall be used to calculate the 40-, 20-, and 10-per-centum increases under clauses (1)—(3) of this paragraph shall not include that part, if any, of the payment which is a fraction of a dollar.

(f) Change between landlord and tenants or sharecroppers affecting landlord's payments.

Any change in the relationship between the landlord and the tenants or sharecroppers, with respect to any farm, that would increase over the previous year the amount of payments or grants of other aid under subsection (b) of this section that would otherwise be made to any landlord shall not operate to increase such payment or grant to such landlord. Any reduction in the number of tenants below the average number of tenants on any farm during the preceding three years that would increase the payments or grants of other aid under such subsection that would otherwise be made to the landlord shall not hereafter operate to increase any such payment or grant to such landlord. Such limitations shall not apply if on investigation the local committee finds that the change is justified and approves such change in relationship or reduction. Such action of local committees shall be subject to approval or disapproval by State committees.

(g) Assignment of payment; procedure for assignment; rules and regulations.

A payment which may be made to a farmer under this section, may be assigned, without discount, by him in writing as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice. Such assignment shall be signed by the farmer and witnessed by a member of the county committee or by an employee of such committee, except that where the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, such assignment may be witnessed by a bonded officer of the lending institution. Such assignment shall be filed with the county committee. Such assignment shall not be made to pay or secure any preexisting indebtedness. This provision shall not authorize any suit against or impose any liability upon the Secretary or any disbursing agent if payment to the farmer is made without regard to the existence of any such assignment. The Secretary shall prescribe such regulations as he determines necessary to carry out the provisions of this subsection. (Apr. 27, 1935, ch. 85, § 8, as added Feb. 29, 1936, ch. 104, § 1, 49 Stat. 1149, and amended June 28, 1937, ch. 395, § 1, 50 Stat. 329; Feb. 16, 1938, 3 p.m., ch. 30, title I, §§ 101, 102, 103, 52 Stat. 31, 34, 35; Apr. 7, 1938, ch. 107, §§ 16—18, 52 Stat. 204, 205; Apr. 10, 1939, ch. 48, 53 Stat. 573; May 14, 1940, ch. 200, 54 Stat. 216; July 2, 1940, ch. 521; § 2, 54 Stat. 727; June 21, 1941, ch. 217, 55 Stat. 257; Dec. 26, 1941, ch. 626, § 1, 55 Stat. 860; Feb. 6, 1942, ch. 44, § 4, 56 Stat. 53; Sept. 29, 1942, ch. 568, 56 Stat. 761; Sept. 21, 1944, ch. 412, title III, § 301, 58 Stat. 737; July 25, 1946, ch. 642, 60 Stat. 663; July 3, 1948, ch. 827, title I, § 4, 62 Stat. 1250; Sept. 23 1950, ch. 997, 64 Stat. 978; May 26, 1952, ch. 335, 66 Stat. 95; Aug. 28, 1954, ch. 1041, title V, § 501, 68 Stat. 907; Aug. 9, 1955, ch. 624, 69 Stat. 545; Apr. 6, 1956, ch. 186, 70 Stat. 105; July 24, 1956, ch. 668, 70 Stat. 597; July 25, 1958, Pub. L. 85–553, 72 Stat. 414; June 25, 1959, Pub. L. 86–70, § 13 (a), 73 Stat. 143; July 12, 1960, Pub. L. 86–624, § 8(a), 74 Stat. 412; Sept. 27, 1962, Pub. L. 87–703, title I, § 101 (2), (3), 76 Stat. 605; Aug. 31, 1964, Pub. L. 88–534, § 1, 78 Stat. 743; Nov. 2, 1966, Pub. L. 89–742, 80 Stat. 1167.)

(As amended Aug. 30, 1972, Pub. L. 92–419, title VI, §§ 605, 606 (2)–(5), 86 Stat. 676, 677.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–419, §§ 605, 606 (2), (3), added paragraph respecting long-term rural environmental protection contracts; included in the first sentence reference to cl. (6) of section 590g of this title and in item (2) provided as a measure for amount of payments and grants the treatment or use of the land for the prevention or abatement of agriculture-related pollution; and included in the second paragraph provisions respecting making available pollution prevention or abatement aids and orders covering pollution prevention or abatement aids and carrying out by the producers or pollution prevention or abatement practices, respectfully.

Subsec. (d). Pub. L. 92–419, § 606(4), included reference to cl. (6) of section 590g(a) of this title in first par.

Subsec. (e). Pub. L. 92–419, § 606(5), inserted in the proviso provision for payments based on agriculture-related pollution prevention or abatement practices.

1966—Subsec. (g). Pub. L. 89–742 permitted assignments for handling or marketing an agricultural commodity, or performing a conservation practice, broadened the qualifications as to who may witness the signature of a farmer assigning such payments, and directed the Secretary to promulgate such regulations necessary to carry out the provisions of this subsection.

1964—Subsec. (b). Pub. L. 88–534 provided that members of local committees and not delegates from local areas shall nominate and elect a county committee of three farmers in the county, substituted three year staggered terms of office for county committeemen in place of one year terms, limited committeemen to a maximum of three consecutive terms, and eliminated provisions for the annual election of delegates to a county convention for the election of a county committee.

1962—Subsec. (a). Pub. L. 87–703, § 101(2), repealed subsec. (a) which related to duration of authority of Secretary of Agriculture in the operation of a Federal program on a temporary basis.

Subsec. (b). Pub. L. 87–703, § 101(3), substituted the introductory "The" for "subject to the limitations provided in subsection (a) of this section, the."

1960—Subsec. (b). Pub. L. 86–624 substituted "in the States of the Union, except Alaska" for "in the continental United States, except in Alaska."

1959—Subsec. (b). Pub. L. 86–70 inserted words ", except in Alaska" following continental United States."

1958—Subsec. (a). Pub. L. 85–553 substituted "January 1, 1963" and "December 31, 1962" for "January 1, 1959" and "December 31, 1958", respectively, whenever appearing.

1956—Subsec. (a). Act July 24, 1956, substituted "January 1, 1959" and "December 31, 1958" for "January

1, 1957" and "December 31, 1956", respectively, wherever appearing.

Subsec. (b). Act Apr. 6, 1956, substituted "Clauses" for "In arid or semiarid sections," in the second sentence.

1955—Subsec. (e). Act Aug. 9, 1955, authorized payments to persons carrying out conservation practices on federally owned noncropland.

1954—Subsec. (a). Act Aug. 28, 1954, § 501 (a), (b), substituted "January 1, 1957" and "December 31, 1956" for "January 1, 1955" and "December 31, 1954" wherever appearing, and added last two sentences.

Subsec. (b). Act Aug. 28 1954, § 501 (c), eliminated "at not to exceed a fair price fixed in accordance with regulations to be prescribed by the Secretary" following "furnished to producers" in second paragraph and added last sentence.

1952—Subsec. (a). Act May 26, 1952, extended the Secretary's authority for 2 more years until Jan. 1, 1955.

1950—Subsec. (a). Act Sept. 23, 1950, extended the Secretary's authority until Jan. 1, 1953.

1948—Subsec. (a). Act July 3, 1948, extended the Secretary's authority until Jan. 1, 1951.

1946—Subsec. (a). Act July 25, 1946, substituted "January 1, 1949" for "January 1, 1947" wherever appearing and "December 31, 1948" for December 31, 1946".

1944—Subsec. (b). Act. Sept. 21, 1944, which added par. beginning "Appropriations are hereby".

Subsec. (e) amended by act Sept. 21, 1944, which added par. beginning "Persons who carry".

1942—Subsec. (c)(2). Act Feb. 6, 1942, added last two sentences.

Subsec. (e). Act Sept. 29, 1942, amended first sentence.

1941—Subsec. (a). Act Dec. 26, 1941, substituted "January 1, 1947" for "January 1, 1942" and "December 31, 1946" for "December 31, 1941."

Subsec. (b). Act June 21, 1941, added par. beginning with words "Notwithstanding any other provisions of law."

1940—Subsec. (c)(5). Act July 2, 1940, added the last sentence.

Subsec. (f). Act May 14, 1940, eliminated the last sentence, which provided "Such limitations shall apply only if the county committee finds that the change or reduction is not justified and disapproves such change or reduction" and substituted the last two sentences.

1939—Subsec. (c)(4). Act Feb. 16, 1938, repealed subsec. (c)(4) which provided "Notwithstanding any other provision of this subsection, if, for any reason other than flood or drought, the acreage of wheat, cotton, corn, or rice planted on the farm is less than 80 per centum of the farm acreage allotment for such commodity for the purpose of payment, such farm acreage allotment shall be 25 per centum in excess of such planted acreage."

1938—Subsecs. (b) and (c) amended generally by act Feb. 16, 1938.

Subsecs. (d), (e), (f), and (g) added by act Feb. 16, 1938.

Subsec. (c)(5). Act Apr. 7, 1938, substituted "for any county" for "on any farm" in the first sentence, and "therein," for "thereon".

Subsec. (c) (6) added by act Apr. 7, 1938.

Subsec. (g). Act Apr. 7, 1938, substituted second and third sentences for sentences which provided "Such assignment shall be acknowledged by the farmer before the county agricultural extension agent and filed with such agent. The farmer shall file with such county agricultural extension agent an affidavit stating that the assignment is not made to pay or secure any pre-existing indebtedness."

1937—Subsec. (a). Act June 28, 1937, substituted "January 1, 1942" for "January 1, 1938" wherever appearing, and "December 31, 1941" for "December 31, 1937".

§ 590h–1. Same; naval stores; utilization of agencies.

In administering the naval stores conservation programs authorized in section 590h of this title and in making payments thereunder to gum naval stores producers the Secretary may utilize the services of regional associations of such producers or any agency of the Government in lieu of the State, county, and other local committees utilized in the other agricultural conservation programs if he finds that more efficient administration will result, and the provisions of section 1388 (b) of Title 7 shall otherwise be applicable to the administration of said naval stores conservation programs. (June 16, 1938, ch. 464, title I, 52 Stat. 746.)

§ 590h–3. Repealed. Pub. L. 88–534, § 2, Aug. 31, 1964, 78 Stat. 743.

Section, act Aug. 28, 1954, ch. 1041, title V, § 503, 68 Stat. 908, provided that nothing in section 590h(b) of this title or in any other law, shall be construed to authorize the imposition of limitations upon the number of terms for which members of county committees established under such section may be reelected. See section 590h(b) of this title.

§ 590h–4. Conditions for payments of grants.

Payments of grants under sections 590g, 590h, 590i, 590j to 590q of this title, may be conditioned upon the utilization of land with respect to which such payments or grants are to be made in conformity with farming practices which will encourage and provide for soil-building and soil- and water-conserving practices in the most practical and effective manner and adapted to conditions in the several States, as determined and approved by the State committees appointed pursuant to section 590h (b) of this title, for the respective States. (Aug. 3, 1956, ch. 950, § 6 (b), 70 Stat. 1033.)

§ 590i. Surveys and investigations; publication of information; reports.

The Secretary is authorized to conduct surveys, investigations, and research relating to the conditions and factors affecting, and methods of accomplishing most effectively, the policy and purposes of section 590g (a) of this title. Notwithstanding any provision of existing law, the Secretary is authorized to make public such information as he deems necessary to carry out the provisions of this chapter. The Secretary shall transmit to the Congress a report, for the fiscal year ending June 30, 1937, and for each fiscal year thereafter, of the operations for such year under this chapter, which report shall include a statement of the expenditures made and obligations incurred, by classes and amounts. (Apr. 27, 1935, ch. 85, § 9, as added Feb. 29, 1936, ch. 104, § 1, 49 Stat. 1150, and amended June 28, 1937, ch. 395, § 2, 50 Stat. 329.)

AMENDMENTS

1937—Act June 28, 1937, amended section by adding last sentence.

§ 590i–1. Furnishing photographs, mosaics, and maps required by Soil Conservation Service.

Reproductions of such aerial or other photographs, mosaics, and maps as shall be required in connection with the authorized work of the Soil Conservation Service may be furnished at the cost of reproduction

to Federal, State, county, or municipal agencies requesting such reproductions. (July 22, 1942, ch. 516, § 1, 56 Stat. 691.)

§ 590i–2. Furnishing photographs, mosaics, and maps required in soil conservation operations of Department of the Interior.

Reproductions of such aerial or other photographs, mosaics, and maps as shall be required in connection with the authorized soil and moisture conservation operations of the Department of the Interior may be furnished to cooperating persons or agencies and to Government agencies at the estimated cost of furnishing such reproductions, and to other persons or agencies at such prices (not less than estimated cost of furnishing such reproductions) as the Secretary may determine, the money received from such sales to be deposited in the Treasury to the credit of this appropriation. (July 2, 1942, ch. 473, § 1, 56 Stat. 508.)

* * * * *

§ 590o. Appropriations for purposes of sections 590g and 590h; allocation of funds among commodities.

To enable the Secretary of Agriculture to carry out the purposes of sections 590g and 590h of this title there is authorized to be appropriated for any fiscal year not exceeding $500,000,000.

The funds available for payments (after allowing for estimated administrative expenses, and not to exceed 5 per centum for payments with respect to range lands, noncrop pasture lands, and naval stores) shall be allocated among the commodities produced with respect to which payments or grants are to be computed. In allocating funds among the commodities the Secretary shall take into consideration and give equal weight to (1) the average acreages planted to the various commodities (including rotation pasture), for the ten years 1928 to 1937, adjusted for abnormal weather and other conditions, including acreage diverted from production under the agricultural adjustment and soil conservation programs; (2) the value at parity prices of the production from the allotted acreages of the various commodities for the year with respect to which the payment is made; (3) the average acreage planted to the various commodities during the ten years 1928 to 1937, including the acreage diverted from production under the agricultural adjustment and soil conservation programs, in excess of the allotted acreage for the year with respect to which the payment is made; and (4) the value based on average prices for the preceding ten years of the production of the excess acreage determined under item (3). The rate of payment used in making payments to the producers of each commodity shall be such that the estimated payments with respect to such commodity shall equal the amount of funds allocated to such commodity as herein provided. For the purpose of allocating funds and computing payments or grants the Secretary is authorized to consider as a commodity a group of commodities or a regional or market classification of a commodity. For the purpose of computing payments or grants, the Secretary is authorized to use funds allocated to two or more commodities produced on farms of a designated regional or other classification to compute payments with respect to one of such commodities on such farms, and to use funds, in an amount equal to the estimated payments which would be made in any county, for making payments pursuant to a special program under section 590h of this title approved by the Secretary for such county: *Provided*, That farm acreage allotments shall be made for wheat in 1938, but in determining compliance wheat shall be considered in the group with other crops for which special acreage allotments are not made.

Notwithstanding the foregoing provisions of this section and the provisions of section 590g(g) of this title, programs of soil-building practices, soil- and water-conserving practices, and agriculture-related pollution prevention and abatement practices shall be based on a distribution of the funds available for payments and grants among the several States in accordance with their conservation needs, as determined by the Secretary, except that the proportion allocated to any State shall not be reduced by more than 15 per centum from the distribution of such funds for the next preceding program year. In carrying out such programs, the Secretary shall give particular consideration to conservation problems on farm lands diverted from crops under acreage allotment programs and to the maintenance of a proper balance between soil conserving and soil depleting crops on the farm. (As amended Aug. 30, 1972, Pub. L. 92–419, title VI, § 606(6), 86 Stat. 677.)

AMENDMENTS

1972—Pub. L. 92–419 made provisions of last paragraph respecting distribution of funds applicable to programs of agriculture-related pollution prevention and abatement practices.

1954—Act Aug. 28, 1954, added last paragraph.

1938—Act Feb. 16, 1938, added paragraph beginning "The funds available".

§ 590p. Limitation on obligations incurred; Great Plains conservation program.

(a) The obligations incurred for the purpose of carrying out, for any calendar year, the provisions of sections 590g, 590h, 590i, and 590j to 590n of this title shall not exceed $500,000,000.

(b) Notwithstanding any other provision of law—

(1) the Secretary is authorized, within the amounts of such appropriations as may be provided therefor, to enter into contracts of not to exceed ten years with owners and operators of land in the Great Plains area having such control as the Secretary determines to be needed of the farms, ranches, or other lands covered thereby; but such contracts shall be entered into with respect to lands, other than farms or ranches, only where erosion is so serious as to make such contracts necessary for the protection of farm or ranch lands. Such contracts shall be designed to assist farm, ranch, or other land owners or operators to make, in orderly progression over a period of years, changes in their cropping systems or land uses which are needed to conserve, develop, protect, and utilize the soil and water resources of their farms, ranches, and other lands and to install the soil and water conservation measures and carry out the practices needed under such changed systems and uses. Such contracts may be entered into

during the period ending not later than December 31, 1981, with respect to farms, ranches, and other lands in counties in the Great Plains area of the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, designated by the Secretary as susceptible to serious wind erosion by reason of their soil types, terrain, and climatic and other factors. The land owner or operator shall furnish to the Secretary a plan of farming operations or land use which incorporates such soil and water conservation practices and principles as may be determined by him to be practicable for maximum mitigation of climatic hazards of the area in which such land is located, and which outlines a schedule of proposed changes in cropping systems or land use and of the conservation measures which are to be carried out on the farm, ranch, or other land during the contract period to protect the farm, ranch, or other land from erosion and deterioration by natural causes. Such plan may also include practices and measures for (a) enhancing fish and wildlife and recreation resources, (b) promoting the economic use of land, and (c) reducing or controlling agricultural related pollution. Inclusion in the farm plan of these practices shall be the exclusive decision of the land owner or operator. Approved conservation plans of land owners and operators developed in cooperation with the soil and water conservation district in which their lands are situated shall form a basis for contracts. Under the contract the land owner or operator shall agree—

(i) to effectuate the plan for his farm, ranch, or other land substantially in accordance with the schedule outlined therein unless any requirement thereof is waived or modified by the Secretary pursuant to paragraph (3) of this subsection;

(ii) to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder upon his violation of the contract at any stage during the time he has control of the land if the Secretary, after considering the recommendations of the soil and water conservation district board, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the contract;

(iii) upon transfer of his right and interest in the farm, ranch, or other land during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

(iv) not to adopt any practice specified by the Secretary in the contract as a practice which would tend to defeat the purposes of the contract;

(v) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of the program or to facilitate the practical administration of the program.

In return for such agreement by the landowner or operator the Secretary shall agree to share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost sharing is appropriate and in the public interest. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the physical installation of the conservation practices and measures under the contract;

(2) the Secretary may terminate any contract with a land owner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other similar conservation, land use, or commodity programs administered by the Secretary;

(3), (4) Repealed. Pub. L. 89–321, title VI, § 602(g), Nov. 3, 1965, 79 Stat. 1208.

(5) in applying the provisions of paragraph (6) of section 1340 of Title 7, relating to the reduction of storage amount of wheat, any acreage diverted from the production of wheat under the program carried out under this subsection shall be regarded as wheat acreage;

(6) the Secretary shall utilize the technical services of agencies of the Department of Agriculture in determining the scope and provisions of any plan and the acceptability of the plan for effectuating the purposes of the program. In addition the Secretary shall take into consideration programs of State and local agencies, including soil conservation districts, having for their purposes the objectives of maximum soil and water conservation;

(7) there is hereby authorized to be appropriated, without fiscal year limitations, such sums as may be necessary to carry out this subsection: *Provided*, That the total cost of the program (excluding administrative costs) shall not exceed $300,000,000, and for any program year payments shall not exceed $25,000,000. The funds made available for the program under this subsection may be expended without regard to the maximum payment limitation and small payment increases required under section 590h(e) of this title, and may be distributed among States without regard to distribution of funds formulas of section 590o of this title. The program authorized under this subsection shall be in addition to, and not in substitution of, other programs in such area authorized by this or any other Act.

(c) Notwithstanding any other provision of law—

(1) The Secretary shall formulate and carry out a special agricultural conservation program for 1961, without regard to provisions which would be applicable to the regular agricultural conservation program, under which, subject to such terms and conditions as the Secretary determines, conservation payments in amounts determined by the Secretary to be fair and reasonable shall be made to producers who divert acreage from the production of corn and grain sorghums to an approved conservation use and increase their average acreage devoted in 1959 and 1960 to designated soil conserving crops or practices by an equal amount: *Provided, however*, That any producer may elect in lieu of such payment to devote such diverted acreage to castor beans, safflower, sunflower, or sesame, if designated by the Secretary. Such special agricultural conservation program shall require the producer to take such measures as the Secretary may deem appropriate to keep such diverted acreage free from insects, weeds, and rodents. The acreage eligible for payments in cash or in an equivalent amount in kind under such conservation program shall be an acreage equivalent to 20 per centum of the average acreage on the farm planted to corn and grain sorghums in the crop years 1959 and 1960 or up to twenty acres, whichever is greater. Such payments in cash or in kind at the basic county support rate may be made on an amount of corn and grain sorghums not in excess of 50 per centum of the normal production of the acreage diverted from corn and grain sorghums on the farm based on its average yield per acre for the 1959 and 1960 crop acreage. Payments in kind only may be made by the Secretary for the diversion of up to an additional 20 per centum of such corn and grain sorghum acreage. Payments in kind on such additional acreage may be made at the basic county support rate on an amount of corn and grain sorghums not in excess of 60 per centum of the normal production of the acreage diverted from corn and grain sorghums on the farm based on its average yield per acre for the 1959 and 1960 crop acreage. The Secretary may make such adjustments in acreage and yields for the 1959 and 1960 crop years as he determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop rotation practices, type of soil, and topography. The Secretary may make not to exceed 50 per centum of any payments to producers in advance of determination of performance.

(2) There are authorized to be appropriated such amounts as may be necessary to enable the Secretary to carry out this subsection. Obligations may be incurred in advance of appropriations therefor and the Commodity Credit Corporation is authorized to advance from its capital funds such sums as may be necessary to pay administrative expenses in connection with such program during the fiscal year ending June 30, 1961, and to pay such costs as may be included in carrying out section 3 of the Act which added this subsection to this Act.

(3) The Secretary shall provide by regulations for the sharing of payments under this subsection among producers on the farm on a fair and equitable basis and in keeping with existing contracts.

(d) Notwithstanding any other provision of law—

(1) The Secretary shall formulate and carry out a special agricultural conservation program for 1962, without regard to provisions which would be applicable to the regular agricultural conservation program, under which, subject to such terms and conditions as the Secretary determines, conservation payments in amounts determined by the Secretary to be fair and reasonable shall be made to producers who divert acreage from the production of corn and grain sorghums, and barley, respectively, to an approved conservation use and increase their average acreage of cropland devoted in 1959 and 1960 to designated soil conservation crops or practices including summer fallow and idle land by an equal amount: *Provided*, That the Secretary may permit such diverted acreage to be devoted to the production of guar, sesame, safflower, sunflower, castor beans, other annual field crops for which price support is not made available, and flax, when such crops are not in surplus supply and will not be in surplus supply if permitted to be grown on the diverted acreage, subject to the condition that payment with respect to diverted acreage devoted to any such crop shall be at a rate determined by the Secretary to be fair and reasonable, taking into consideration the use of such acreage for the production of such crops, but in no event shall the payment exceed one-half the rate which would otherwise be applicable if such acreage were devoted to conservation uses and no price support shall be made available for the production of any such crop on such diverted acreage. In order to be eligible for a payment a producer (other than a producer of malting barley as described in section 105(c)(4) of the Agricultural Act of 1949, or a producer of barley on a summer-fallow farm as described in such section) who participates in the special agricultural conservation program of 1962 for corn and grain sorghums must not knowingly devote an acreage on the farm in excess of the average acreage devoted on the farm to barley in 1959 and 1960, and a producer who participates in the special agricultural conservation program for 1962 for barley must not knowingly devote an acreage on the farm to corn and grain sorghums in excess of the average acreage devoted on the farm to corn and grain sorghums in 1959 and 1960. The excess, if any, of the acreage devoted to barley in 1962 on a summer-fallow farm as described in section 105(c)(4) of the Agricultural Act of 1949 over the average acreage devoted to barley on such farm in 1959 and 1960 shall be considered as planted to corn and grain sorghums for the purpose of determining extent of participation and payments under the special agricultural conservation program for 1962 for corn and grain sorghums.

Such special agricultural conservation program shall require the producer to take such measures as the Secretary may deem appropriate to keep such diverted acreage free from insects, weeds, and rodents. The acreage eligible for payments in cash or in an equivalent amount in kind under such conservation program shall be an acreage equivalent to 20 per centum of the average acreage on the farm planted to corn and grain sorghums, or barley, in the crop years 1959 and 1960 or up to twenty acres, whichever is greater. Such payments in cash or in kind at the basic county support rate for the 1961 crop in effect at the time payment rates for the special feed grain program for 1962 are established, adjusted to reflect any changes between the national support rates for the 1961 and 1962 crops may be made on an amount of the commodity not in excess of 50 per centum of the normal production of the acreage diverted from the commodity on the farm based on its adjusted average yield per acre for the 1959 and 1960 crop acreage. Payments in kind only may be made by the Secretary for the diversion of up to an additional 20 per centum of the average acreage on the farm planted to corn and grain sorghums, or barley, in the crop years 1959 and 1960. Payments in kind on such additional acreage may be made at the basic county support rate for the 1961 crop in effect at the time payment rates for the special feed grain program for 1962 are established, adjusted to reflect any changes between the national support rates for the 1961 and 1962 crops on an amount of corn and grain sorghums, or barley, not in excess of 60 per centum of the normal production of the acreage diverted from the commodity on the farm based on its adjusted average yield per acre for the 1959 and 1960 crop acreage. The Secretary may make such adjustments in acreage and yields for the 1959 and 1960 crop years as he determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop rotation practices, type of soil, soil and water conservation measures, and topography. To the extent that a producer proves the actual acreages and yields for the farm for the 1959 and 1960 crop years, such acreages and yields shall be used in making determinations. The Secretary may make not to exceed 50 per centum of any payments to producers in advance of determination of performance.

(2) There are authorized to be appropriated such amounts as may be necessary to enable the Secretary to carry out this subsection. Obligations may be incurred in advance of appropriations therefor and the Commodity Credit Corporation is authorized to advance from its capital funds such sums as may be necessary to pay administrative expenses in connection with such program during the fiscal year ending June 30, 1962, and to pay such costs as may be incurred in carrying out section 133 of the Agricultural Act of 1961.

(3) The Secretary shall provide by regulations for the sharing of payments under this subsection among producers on the farm on a fair and equitable basis and in keeping with existing contracts.

(e)(1) (A) For the purpose of promoting the conservation and economic use of land and of assisting farmers who because of advanced age, poor health, or other reasons, desire to retire from farming but wish to continue living on their farms, the Secretary, without regard to the foregoing provisions of this chapter, except those relating to the use of the services of State and local committees, is authorized to enter into agreements during the calendar years 1971, 1972, and 1973, to be carried out during such period not to exceed ten years as he may determine, with farm and ranch owners and operators providing for changes in cropping systems and land uses and for practices or measures to be carried out primarily on any lands owned or operated by them and regularly used in the production of crops (including crops such as tame hay, alfalfa, and clovers, which do not require annual tillage, and including lands covered by conservation reserve contracts under sections 1831 and 1832 to 1837 of Title 7 for the purpose of conserving and developing soil, water, forest, wildlife, and recreation resources. Such agreements shall include such terms and conditions as the Secretary may deem desirable to effectuate the purposes of this subsection and may provide for payments, the furnishing of materials and services, and other assistance in amounts determined by the Secretary to be fair and reasonable, in consideration of the obligations undertaken by the farm and ranch owners and operators and the rights acquired by the Secretary: *Provided*, That any agreements entered into under this section after July 1, 1970, shall prohibit grazing of such acreage.

(B) Such acreage may be devoted to approved wildlife food plots or fish and wildlife habitat which are established in conformity with standards developed by the Secretary in consultation with the Secretary of the Interior, and the Secretary may compensate producers for such practices. The Secretary may also provide for payment in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit access, without other compensation, to all or such portion of the farm as the Secretary may prescribe by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations. The Secretary after consultation with the Secretary of the Interior shall appoint an Advisory Board consisting of citizens knowledgeable in the fields of agriculture and wildlife with whom he may consult on the wildlife practice phase of programs under this subsection, and the Secretary may compensate members of the Board and reimburse them for per diem and traveling expenses. The Secretary shall invite the several States to participate in wildlife phases of programs under this subsection by assisting the Department of Agriculture in developing guidelines for (a) providing technical assistance for wildlife and habitat improvement practices, (b) reviewing applications of farmers for the public land use option and selecting eligible areas based on desirability of wildlife habitat, (c) determining accessibility, (d) evaluating effects on surrounding areas, (e) considering esthetic values, (f) checking compliance by cooperators, and

(g) carrying out programs of wildlife stocking and management on the acreage set aside. The Secretary shall consult with the Secretary of the Interior regarding regulations to govern the administration of those aspects of this subparagraph (B) that pertain to wildlife. Funds are authorized to be appropriated to the Secretary of the Interior for use in assisting the State wildlife agencies to carry out the provisions of this subparagraph and in administering such assistance.

(2) No agreement shall be entered into under this subsection covering land with respect to which the ownership has changed in the two year period preceding the first year of the contract period unless (a) the new ownership was acquired by will or succession as a result of the death of the previous owner, (b) the land becomes a part of an existing farm or ranch, or (c) the land is combined with other land as a farming or ranching enterprise which the Secretary determines will effectuate the purposes of the program: *Provided*, That this provision shall not prohibit the continuation of an agreement by a new owner after an agreement has once been entered into under this subsection. The foregoing provision shall not prevent a producer from placing a farm in the program if the farm was acquired by the producer to replace an eligible farm from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain.

(3) The Secretary shall provide adequate safeguards to protect the farming opportunities and interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments under this subsection.

(4) The Secretary may agree to such modification of agreements previously entered into as he may determine to be desirable to carry out the purposes of this subsection or to facilitate the practical administration of the program carried out pursuant to this subsection. Any agreement may be terminated by mutual agreement with the producer if the Secretary determines that such termination would be in the public interest.

(5) The Secretary shall issue such regulations as he determines necessary to carry out the provisions of this subsection. The Secretary may if he determines that such action will contribute to the effective and equitable administration of the program use an advertising-and-bid procedure in determining the lands in any area to be covered by agreements. The total acreage placed under agreements in any county or local community shall be limited to a percentage of the total eligible acreage in such county or local community which the Secretary determines would not adversely affect the economy of the county or local community. In determining such percentage the Secretary shall give appropriate consideration to the productivity of the acreage being retired as compared to the average productivity of eligible acreage in the county or local community.

(6) For the purpose of obtaining an increase in the permanent retirement of cropland to noncrop uses the Secretary may, notwithstanding any other provision of law, transfer funds available for carrying out the program to any other Federal agency or to States or local government agencies for use in rural areas in acquiring cropland for the preservation of open spaces, natural beauty, the development of wildlife or recreational facilities, or the prevention of air or water pollution under terms and conditions consistent with and at costs not greater than those under agreements entered into with producers, provided the Secretary determines that the purpose of the program will be accomplished by such action. The Secretary also is authorized to share the cost with State and local governmental agencies and other Federal agencies in the establishment of practices or uses which will establish, protect, and conserve open spaces, natural beauty, wildlife or recreational resources, or prevent air or water pollution under terms and conditions and at costs consistent with those under agreements entered into with producers, provided the Secretary determines that the purposes of the program will be accomplished by such action. No appropriation shall be made for any agreement under this paragraph (6) involving an estimated total Federal payment in excess of $250,000 unless such agreement has been approved by resolution adopted by the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate.

(7) There is authorized to be appropriated such sums as may be necessary to carry out this subsection. The Secretary is authorized to utilize the facilities, services, authorities, and funds of the Commodity Credit Corporation in discharging his functions and responsibilities under this subsection including payment of costs of administration for the program authorized under this subsection: *Provided*, That after June 30, 1972, the Commodity Credit Corporation shall not make any expenditures for carrying out the purposes of this subsection unless the Corporation has received funds to cover such expenditures from appropriations made to carry out the purposes of this subsection. In carrying out the program, the Secretary shall not during any of the fiscal years ending June 30, 1971, through June 30, 1973, or during the period June 30, 1973, to December 31, 1973, (A) enter into agreements with producers which would require payments to producers in any calendar year under such agreements in excess of $10,000,000 plus any amount by which agreements entered into in prior fiscal years require payments in amounts less than authorized for such years, or (B) enter into agreements with States or local agencies under paragraph (6) which would require payments to such State or local government agencies in any calendar year under such agreements in excess of $10,000,000 plus any amount by which agreements entered into in prior fiscal years require payments in amounts less than authorized for such years. For purposes of applying the foregoing limitations, the annual payment shall be chargeable to the year in which performance is rendered regardless of the year in which it is made.

(f) The Secretary is authorized to use the services, facilities, and authorities of Commodity Credit Cor-

poration for the purpose of making disbursements to producers under programs formulated pursuant to section 590h of this title and subsection (e) of this section: *Provided*, That no such disbursements shall be made by Commodity Credit Corporation unless it has received funds to cover the amount thereof from appropriations available for the purpose of carrying out such programs.

(g) Notwithstanding any other provision of law—

(1) The Secretary shall formulate and carry out a special agricultural conservation program for 1963, without regard to provisions which would be applicable to the regular agricultural conservation program, under which, subject to such terms and conditions as the Secretary determines, conservation payments in amounts determined by the Secretary to be fair and reasonable shall be made to producers who divert acreage from the production of corn, grain sorghums, and barley to an approved conservation use and increase their average acreage of cropland devoted in 1959 and 1960 to designated soil-conserving crops or practices including summer fallow and idle land by an equal amount: *Provided*, That the Secretary may permit such diverted acreage to be devoted to the production of guar, sesame, safflower, sunflower, castor beans, and flax, when such crops are not in surplus supply and will not be in surplus supply if permitted to be grown on the diverted acreage, subject to the condition that payment with respect to diverted acreage devoted to any such crop shall be at a rate determined by the Secretary to be fair and reasonable, taking into consideration the use of such acreage for the production of such crops, but in no event shall the payment exceed one-half the rate which would otherwise be applicable if such acreage were devoted to conservation uses and no price support shall be made available for the production of any such crop on such diverted acreage. Such special agricultural conservation program shall require the producer to take such measures as the Secretary may deem appropriate to keep such diverted acreage free from erosion, insects, weeds, and rodents. The acreage eligible for payments in cash or in an equivalent amount in kind under such conservation program shall be an acreage equivalent to 20 per centum of the average acreage on the farm planted to corn, grain sorghums, and barley in the crop years 1959 and 1960 or up to twenty-five acres, whichever is greater. Payments in kind only may be made by the Secretary for the diversion of up to an additional 30 per centum of the average acreage on the farm planted to corn, grain sorghums, and barley, in the crop years 1959 and 1960. Payments may be made at the basic county support rate for the 1962 crop in effect at the time payment rates for the special feed grain program for 1963 are established, adjusted to reflect any changes between the national support rates for the 1962 and 1963 crops on an amount of the commodity not in excess of 50 per centum of the normal production of the acreage diverted from the commodity on the farm based on its adjusted average yield per acre for the 1959 and 1960 crop acreage. The Secretary may make such adjustments in acreage and yields for the 1959 and 1960 crop years as he determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop rotation practices, type of soil, soil and water conservation measures, and topography. The Secretary may also make such adjustments in yields as he determines necessary to reflect any increases in yields since the 1959 and 1960 crop years as the result of the adoption or the improvement of an irrigation system if such improvement or adoption of such irrigation system was made prior to the effective date of this sentence but such adjustment in yields shall apply only to payments with respect to acreage diverted pursuant to the requirements of section 105(c)(6) of the Agricultural Act of 1949, as amended. To the extent that a producer proves the actual acreages and yields for the farm for the 1959 and 1960 crop years, such acreages and yields shall be used in making determinations. The Secretary may make not to exceed 50 per centum of any payments to producers in advance of determination of performance. Notwithstanding any other provision of this subsection (g)(1), barley shall not be included in the program for a producer of malting barley exempted pursuant to section 105(c)(6) of the Agricultural Act of 1949 who participates only with respect to corn and grain sorghums and does not knowingly devote an acreage on the farm to barley in excess of 110 per centum of the average acreage devoted on the farm to barley in 1959 and 1960.

(2) There are authorized to be appropriated such amounts as may be necessary to enable the Secretary to carry out this subsection. Obligations may be incurred in advance of appropriations therefor and the Commodity Credit Corporation is authorized to advance from its capital funds such sums as may be necessary to pay administrative expenses in connection with such program during the fiscal year ending June 30, 1963, and to pay such costs as may be incurred in carrying out section 303 of the Food and Agriculture Act of 1962.

(3) The Secretary shall provide by regulations for the sharing of payments under this subsection among producers on the farm on a fair and equitable basis and in keeping with existing contracts.

(h) Notwithstanding any other provision of law—

(1) For the 1964 crop and the 1965 crop of feed grains, if the Secretary determines that the total supply of feed grains will, in the absence of an acreage diversion program, likely be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices of feed grains and to meet any national emergency, he may formulate and carry out an acreage diversion program for feed grains, without regard to provisions which would be applicable to the regular agricultural conservation program, under which, subject to such terms and conditions as the Secretary determines, conser-

vation payments in amounts determined by the Secretary to be fair and reasonable shall be made to producers who divert acreage from the production of feed grains to an approved conservation use and increase their average acreage of cropland devoted in 1959 and 1960 to designated soil-conserving crops or practices including summer fallow and idle land by an equal amount. Payments shall not be made in amounts in excess of 50 per centum of the estimated basic county support rate, including that part of the support price made available through payments in kind, on the normal production of the acreage diverted from the commodity on the farm based on its adjusted average yield per acre. Notwithstanding the foregoing provisions, the Secretary may permit such diverted acreage to be devoted to the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, and flax, if he determines that such crops are not in surplus supply and will not be in surplus supply if permitted to be grown on the diverted acreage, subject to the condition that payment with respect to diverted acreage devoted to any such crop shall be at a rate determined by the Secretary to be fair and reasonable, taking into consideration the use of such acreage for the production of such crops, but in no event shall the payment exceed one-half the rate which would otherwise be applicable if such acreage were devoted to conservation uses, and no price support shall be made available for the production of any such crop on such diverted acreage. The base period for the purpose of determining the adjusted average yield in the case of payments with respect to the 1964 crop shall be the four-year period 1959–1962, and in the case of payments with respect to the 1965 crop shall be the five-year period 1959–1963. The term "feed grains" means corn, grain sorghums, barley, and, if for any crop the producer so requests for purposes of having acreage devoted to the production of wheat considered as devoted to the production of feed grains, pursuant to the provisions of section 328 of the Food and Agriculture Act of 1962, the term "feed grains" shall include oats and rye: *Provided*, That acreages of corn, grain sorghums, and barley shall not be planted in lieu of acreages of oats and rye: *Provided further*, That the acreage devoted to the production of wheat shall not be considered as an acreage of feed grains for purposes of establishing the feed grain base acreage for the farm for subsequent crops. Such feed grain diversion program shall require the producer to take such measures as the Secretary may deem appropriate to keep such diverted acreage free from erosion, insects, weeds, and rodents. The acreage eligible for participation in the program shall be such acreage (not to exceed 50 per centum of the average acreage on the farm devoted to feed grains in the crop years 1959 and 1960 or twenty-five acres, whichever is greater) as the Secretary determines necessary to achieve the acreage reduction goal for the crop. Payments shall be made in kind. The average acreage of wheat produced on the farm during the crop years 1959, 1960, and 1961, pursuant to the exemption provided in section 335(f) of the Agricultural Adjustment Act of 1938, prior to its repeal by the Food and Agriculture Act of 1962, in excess of the small farm base acreage for wheat established under section 1335 of Title 7, shall be considered as an acreage of feed grains produced in the crop years of 1959 and 1960 for purposes of establishing the feed grain base acreage for the farm, and the rate of payment for diverting such wheat shall be an amount determined by the Secretary to be fair and reasonable in relation to the rates of payment for diverting feed grains. The Secretary may make such adjustments in acreage and yields as he determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, and topography. To the extent that a producer proves the actual acreages and yields for the farm, such acreages and yields shall be used in making determinations. Notwithstanding any other provision of this subsection (*l*)(1),[1] the Secretary may, upon unanimous request of the State committee established pursuant to section 590h(b) of this title, adjust the feed grain bases for farms within any State or county to the extent he determines such adjustment to be necessary in order to establish fair and equitable feed grain bases for farms within such State or county. The Secretary may make not to exceed 50 per centum of any payments to producers in advance of determination of performance: *Provided*, That in no event shall the Secretary in the crop years 1964 or 1965 make payments to any producers under this subsection and under section 105(d) of the Agricultural Act of 1949, as amended, in excess of 20 per centum of the fair market value of any acreage involved. Notwithstanding any other provision of this subsection (h)(1), barley shall not be included in the program for a producer of malting barley exempted pursuant to section 105(d) of the Agricultural Act of 1949 who participates only with respect to corn and grain sorghums and does not knowingly devote an acreage on the farm to barley in excess of 110 per centum of the average acreage devoted on the farm to barley in 1959 and 1960.

(2) Notwithstanding any other provision of this subsection, not to exceed 1 per centum of the estimated total feed grain bases for all farms in a State for any year may be reserved from the feed grain bases established for farms in the State for apportionment to farms on which there were no acreages devoted to feed grains in the crop years 1959 and 1960 on the basis of the following factors: Suitability of the land for the production of feed grains, the past experience of the farm operator in the production of feed grains, the extent to which the farm operator is dependent on income from farming for his livelihood, the produc-

[1] So in original. There is no subsection (*l*)(1); probably should be "subsection (h)(1)."

tion of feed grains on other farms owned, operated, or controlled by the farm operator, and such other factors as the Secretary determines should be considered for the purpose of establishing fair and equitable feed grain bases. An acreage equal to the feed grain base so established for each farm shall be deemed to have been devoted to feed grains on the farm in each of the crop years 1959 and 1960 for purposes of this subsection except that producers on such farm shall not be eligible for conservation payments for the first year for which the feed grain base is established.

(3) There are hereby authorized to be appropriated such amounts as may be necessary to enable the Secretary to carry out this subsection.

(4) The Secretary shall provide by regulations for the sharing of payments under this subsection among producers on the farm on a fair and equitable basis and in keeping with existing contracts.

(5) Payments in kind shall be made through the issuance of negotiable certificates which the Commodity Credit Corporation shall redeem for feed grains and, notwithstanding any other provision of law, the Commodity Credit Corporation shall, in accordance with regulations prescribed by the Secretary, assist the producer in the marketing of such certificates. In the case of any certificate not presented for redemption within thirty days of the date of its issuance, reasonable costs of storage and other carrying charges, as determined by the Secretary, for the period beginning thirty days after its issuance and ending with the date of its presentation for redemption shall be deducted from the value of the certificate. Feed grains with which Commodity Credit Corporation redeems certificates pursuant to this paragraph shall be valued at not less than the current support price, minus that part of the current support price made available through payments in kind, plus reasonable carrying charges.

(6) Notwithstanding any other provision of law, the Secretary may, by mutual agreement with the producer, terminate or modify any agreement previously entered into pursuant to this subsection if he determines such action necessary because of an emergency created by drought or other disaster, or in order to prevent or alleviate a shortage in the supply of feed grains.

(i) Notwithstanding any other provision of law—

(1) For the 1966 through 1970 crops of feed grains, if the Secretary determines that the total supply of feed grains will, in the absence of an acreage diversion program, likely be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices of feed grains and to meet any national emergency, he may formulate and carry out an acreage diversion program for feed grains, without regard to provisions which would be applicable to the regular agricultural conservation program, under which, subject to such terms and conditions as the Secretary determines, conservation payments shall be made to producers who divert acreage from the production of feed grains to an approved conservation use and increase their average acreage of cropland devoted in 1959 and 1960 to designated soil-conserving crops or practices including summer fallow and idle land by an equal amount. Payments shall be made at such rate or rates as the Secretary determines will provide producers with a fair and reasonable return for the acreage diverted, but not in excess of 50 per centum of the estimated basic county support rate, including the lowest rate of payment-in-kind, on the normal production of the acreage diverted from the commodity on the farm based on the farm projected yield per acre. Notwithstanding the foregoing provisions, the Secretary may permit all or any part of such diverted acreage to be devoted to the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, and flaxseed, if he determines that such production of the commodity is needed to provide an adequate supply, is not likely to increase the cost of the price support program, and will not adversely affect farm income subject to the condition that payment with respect to diverted acreage devoted to any such crop shall be at a rate determined by the Secretary to be fair and reasonable, taking into consideration the use of such acreage for the production of such crops, but in no event shall the payment exceed one-half the rate which otherwise would be applicable if such acreage were devoted to conservation uses. The term "feed grains" means corn, grain sorghums, and, if designated by the Secretary, barley, and if for any crop the producer so requests for purposes of having acreage devoted to the production of wheat considered as devoted to the production of feed grains, pursuant to the provisions of section 1339c of Title 7, the term "feed grains" shall include oats and rye and barley if not designated by the Secretary as provided above: *Provided*, That acreages of corn, grain sorghums, and, if designated by the Secretary, barley, shall not be planted in lieu of acreages of oats and rye and barley if not designated by the Secretary as provided above: *Provided further*, That the acreage devoted to the production of wheat shall not be considered as an acreage of feed grains for purposes of establishing the feed grain base acreage for the farm for subsequent crops. Such feed grain diversion programs shall require the producer to take such measures as the Secretary may deem appropriate to keep such diverted acreage free from erosion, insects, weeds, and rodents. The acreage eligible for participation in the program shall be such acreage (not to exceed 50 per centum of the average acreage on the farm devoted to feed grains in the crop years 1959 and 1960 or twenty-five acres, whichever is greater) as the Secretary determines necessary to achieve the acreage reduction goal for the crop. Payments shall be made in kind. The acreage of wheat produced on the farm during the crop years 1959, 1960, and 1961, pursuant to the exemption provided in sec-

tion 1335(f) of Title 7, prior to its repeal by the Food and Agriculture Act of 1962, in excess of the small farm base acreage for wheat established under section 1335 of Title 7, may be taken into consideration in establishing the feed grain base acreage for the farm. The Secretary may make such adjustments in acreage as he determines necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, and topography. Notwithstanding any other provision of this subsection (i)(1), the Secretary may, upon unanimous request of the State committee established pursuant to section 590h(b) of this title, adjust the feed grain bases for farms within any State or county to the extent he determines such adjustment to be necessary in order to establish fair and equitable feed grain bases for farms within such State or county. The Secretary may make not to exceed 50 per centum of any payments to producers in advance of determination of performance. Notwithstanding any other provision of this subsection, barley shall not be included in the program for a producer of malting barley exempted pursuant to section 105(e) of the Agricultural Act of 1949, who participates only with respect to corn and grain sorghums and does not knowingly devote an acreage on the farm to barley in excess of 110 per centum of the average acreage devoted on the farm to barley in 1959 and 1960.

(2) Notwithstanding any other provision of this subsection, not to exceed 1 per centum of the estimated total feed grain base for all farms in a State for any year may be reserved from the feed grain bases established for farms in the State for apportionment to farms on which there were no acreages devoted to feed grains in the crop years 1959 and 1960 on the basis of the following factors: Suitability of the land for the production of feed grains, the past experience of the farm operator in the production of feed grains, the extent to which the farm operator is dependent on income from farming for his livelihood, the production of feed grains on other farms owned, operated, or controlled by the farm operator, and such other factors as the Secretary determines shoud be considered for the purpose of establishing fair and equitable feed grain bases. An acreage equal to the feed grain base so established for each farm shall be deemed to have been devoted to feed grains on the farm in each of the crop years 1959 and 1960 for purposes of this subsection except that producers on such farm shall not be eligible for conservation payments for the first year for which the feed grain base is established.

(3) There are hereby authorized to be appropriated such amounts as may be necessary to enable the Secretary to carry out this subsection (i).

(4) The Secretary shall provide by regulations for the sharing of payments under this subsection among producers on the farm on a fair and equitable basis and in keeping with existing contracts.

(5) Payments in kind shall be made through the issuance of negotiable certificates which the Commodity Credit Corporation shall redeem for feed grains in accordance with regulations prescribed by the Secretary and, notwithstanding any other provision of law, the Commodity Credit Corporation shall, in accordance with regulations prescribed by the Secretary, assist the producer in the marketing of such certificates. Feed grains with which Commodity Credit Corporation redeems certificates pursuant to this paragraph shall be valued at not less than the current support price made available through loans and purchases, plus reasonable carrying charges.

(6) Notwithstanding any other provision of law, the Secretary may, by mutual agreement with the producer, terminate or modify any agreement previously entered into pursuant to this subsection if he determines such action necessary because of an emergency created by drought or other disaster, or in order to prevent or alleviate a shortage in the supply of feed grains.

(Apr. 27, 1935, ch. 85, § 16, as added Feb. 29, 1936, ch. 104, § 1, 49 Stat. 1151, and amended Aug. 7, 1956, ch. 1030, § 1, 70 Stat. 1115; Sept. 14, 1960, Pub. L. 86–793, § 1, 74 Stat. 1030; Mar. 22, 1961, Pub. L. 87–5, § 2, 75 Stat. 6; Aug. 8, 1961, Pub. L. 87–128, title I, § 132, title IV, § 401, 75 Stat. 302, 319; Mar. 30, 1962, Pub. L. 87–425, § 2, 76 Stat. 50; May 15, 1962, Pub. L. 87–451, § 4, 76 Stat. 70; Sept. 27, 1962, Pub. L. 87–703, title I, § 101 (4), (5), title III, § 302, 76 Stat. 606, 612; May 20, 1963, Pub. L. 88–26, § 3, 77 Stat. 45.) Nov. 3, 1965, Pub. L. 89–321, title III, § 302, title VI, § 602(g), 79 Stat. 1190, 1208; Oct. 11, 1968, Pub. L. 90–559, § 1(1), 82 Stat. 996; Nov. 18, 1969, Pub. L. 91–118, §§ 1–3, 83 Stat. 194, 195; Nov. 30, 1970, Pub. L. 91–524, title VIII, § 801, 84 Stat. 1379.)

AMENDMENTS

1970—Subsec. (e)(1). Pub. L. 91–524, § 801(1)–(5), designated existing provisions as subpar. (A), and, in such subpar. (A) as so designated, added provisions covering assistance to retired farmers to the enumerated purposes, inserted provisions limiting to calendar years 1971, 1972, and 1973 the Secretary's authority to enter into agreements, substituted provisions requiring that agreements entered into after July 1, 1970, prohibit grazing on the acreage for provisions prohibiting annual payments for periods in excess of five years under agreements which provide for the establishment of the tree cover, and added subpar. (B).

Subsec. (e)(2). Pub. L. 91–524, § 801(6), authorized producers to place farms in the program if the farm was acquired by the producer to replace an eligible farm from which he was displaced through the exercise of the right of eminent domain.

Subsec. (e)(3). Pub. L. 91–524, § 801(12), inserted "farming opportunities and" preceding "interests of tenants and sharecroppers".

Subsec. (e)(4). Pub. L. 91–524, § 801(7), authorized the termination of agreements by mutual agreement with the producer if the Secretary determines that such termination would be in the public interest.

Subsec. (e)(5). Pub. L. 91–524, § 801(8), authorized the Secretary to use an advertising-and-bid procedure in determining the lands in any area to be covered by agreements and added provision for a percentage limitation on the total acreage placed under agreement in any county or

local community.

Subsec. (e)(6). Pub. L. 91-524, § 801(9), added subsec. (e)(6). A prior subsec. (e)(6) had been repealed by Pub. L. 89-321 in 1965.

Subsec. (e)(7). Pub. L. 91-524, § 801(10), (11), substituted "June 30, 1972" for "June 30, 1963" as the date after which the Commodity Credit Corporation may not make expenditures unless it has received funds to cover such expenditures from appropriations made to carry out the purposes of this subsection, extended through Dec. 31, 1973, the period during which the Secretary may not enter into agreements with producers which would require payments to producers in any calendar year under such agreements in excess of $10,000,000, and added provisions covering agreements with State and local agencies under par. (6).

1969—Subsec. (b)(1). Pub. L. 91-118, § 1, extended the Great Plains conservation program ten years beyond Dec. 31, 1971, to Dec. 31, 1981; authorized contracts, with respect to lands other than farms or ranches, only where erosion is so serious as to make such contracts necessary for protection of farms or ranch lands; authorized contracts designed to make changes (in cropping systems or land uses) needed to develop, protect, and utilize the resources of farms, ranches, and other lands; provided for carrying out the practices needed under such changed systems and uses and conservation measures on land other than farm or ranch land; authorized practices and measures in the plan for enhancing fish and wildlife and recreation resources, promoting economic use of land, and reducing or controlling agricultural related pollution as an exclusive decision of the land owner or operator; made the basis for contracts the approved conservation plans of land owners and operators developed in cooperation with the soil and water conservation district in which their lands are situated; and among other changes in the text preceding cl. (i), substituted "owners and operators of land in the Great Plains area having such control as the Secretary determines to be needed of the farms, ranches, or other lands" for "producers in the Great Plains area determined by him to have control for the contract period of the farm or ranches", "designed to assist farm, ranch, or other land-owners or operators" for "designed to assist farm and ranch operators", "cropping systems or land uses" and "cropping systems or land use" for "cropping systems and land uses" and "cropping systems and land use", "land-owner or operator shall furnish to the Secretary a plan of farming operations or land use" for "producer shall furnish to the Secretary a plan of farming operations", "climatic hazards of the area in which such land" for "climatic hazards of the area in which the farm"; provided for the agreement to be by the land owner or operator rather than the producer; included in cl. (i) effectuation of the plan for other land; inserted in cl. (ii) ", after considering the recommendations of the soil and water conservation district board," and substituted "violation by the owner or operator" for "producer's violation"; included in cl. (iii) right and interest in other land and substituted "any such land" for "the farm or ranch"; and in the par. following par. (1) substituted "landowner or operator" for "producer" and inserted "and measures" following "conservation practices", in two instances.

Subsec. (b)(2). Pub. L. 91-118, § 2, substituted "land owner or operator" and "owner or operator" for "producer" and authorized the Secretary to agree to such modification of contracts previously entered into as he may determine to be desirable to accomplish equitable treatment with respect to other similar conservation, land use, or commodity programs administered by the Secretary.

Subsec. (b)(7). Pub. L. 91-118, § 3, increased the limitation on total cost of the program from $150,000,000 to $300,000,000.

1968—Subsec. (i)(1). Pub. L. 90-559 provided for a one year extension through 1970.

1965—Subsec. (b). Pub. L. 89-321, § 602(g), repealed pars. (3) and (4) dealing with decrease of cropland during the period of a contract and use of land for permanent vegetation in determining acreage allotments.

Subsec. (e). Pub. L. 89-321, § 602(g), repealed par. (6) providing for inclusion of agreements covering preservation of cropland and surrender of history and allotments in agreements entered hereunder.

Subsec. (i). Pub. L. 89-321, § 302, added subsec. (i).

1963—Subsec. (h). Pub. L. 88-26 added subsec. (h).

1962—Subsec. (d)(1). Pub. L. 87-451 extended the crops which may be grown on diverted acreage to include other annual field crops for which price support is not made available and flax, when such crops are not in surplus supply and will not be in surplus supply when grown on the diverted acreage, and prescribed the rate of payment and its limits.

Pub. L. 87-425 preserved the eligibility of a producer on a summer-fallow farm for participation in the special agricultural conservation program of 1962 for corn and grain sorghums, deeming any excess of acreage devoted to barley in 1962 over the average acreage devoted to barley in 1959 and 1960 as planted to corn and grain sorghums.

Subsec. (e). Pub. L. 87-703, § 101(4), added subsec. (e).

Subsec. (f). Pub. L. 87-703, § 101(5), added subsec. (f).

Subsec. (g). Pub. L. 87-703, § 302, added subsec. (g).

1961—Subsec. (b)(1). Pub. L. 87-128, § 401, substituted "may be entered into" and "with respect to" for "shall be in effect" and "on", respectively, in the third sentence.

Subsec. (c). Pub. L. 87-5 added subsec. (c).

Subsec. (d). Pub. L. 87-128, § 132, added subsec. (d).

1960—Subsec. (b)(3). Pub. L. 86-793, § 1(1), provided that cropland acreage is not to be decreased by reason of maintaining changes in land use from cultivated cropland to permanent vegetation, carried out under any contract heretofore or hereafter entered into, for such period after the expiration of the contract as is equal to the period of the contract.

Subsec. (b)(4). Pub. L. 86-793, § 1(2), included as acreage devoted to the commodity, that acreage changed from cultivated cropland to permanent vegetation under any contract heretofore or hereafter entered into, and which is maintained as such after expiration of the contract for a period equal to that of the contract.

1956—Act Aug. 7, 1956, designated exitsing provisions as subsec. (a) and added subsec. (b).

§ 590p-1. Limitation on wetlands drainage assistance to aid wildlife preservation; termination of limitation; redetermination of need for assistance upon change of ownership of lands.

The Secretary of Agriculture shall not enter into an agreement in the States of North Dakota, South Dakota, and Minnesota to provide financial or technical assistance for wetland drainage on a farm under authority of this chapter, if the Secretary of the Interior has made a finding that wildlife preservation will be materially harmed on that farm by such drainage and that preservation of such land in its undrained status will materially contribute to wildlife preservation and such finding, identifying specifically the farm and the land on that farm with respect to which the finding was made, has been filed with the Secretary of Agriculture within ninety days after the filing of the application for drainage assistance: *Provided*, That the limitation against furnishing such financial or technical assistance shall terminate (1) at such time as the Secretary of the Interior notifies the Secretary of Agriculture that such limitation should not be applicable, (2) one year after the date on which the adverse finding of the Secretary of the Interior was filed unless during that time an offer has been made by the Secretary of the Interior or a State government agency to lease or to purchase the wetland area from the owner thereof as a waterfowl resource,

or (3) five years after the date on which such adverse finding was filed if such an offer to lease or to purchase such wetland area has not been accepted by the owner thereof: *Provided further*, That upon any change in the ownership of the land with respect to which such adverse finding was filed, the eligibility of such land for such financial or technical assistance shall be redetermined in accordance with the provisions of this section. (Apr. 27, 1935, ch. 85, § 16A, as added Oct. 2, 1962, Pub. L. 87–732, 76 Stat. 696.)

55. Soil Information Assistance for Community Planning and Resources Development

42 U.S.C. 3271–3274

Sec.
3271. Availability of soil surveys under soil survey program.
3272. Cooperative assistance to State and other public agencies; types of assistance; private engineering services.
3273. Contributions of State or other public agencies toward the cost of soil surveys.
3274. Authorization of appropriations.

§ 3271. Availability of soil surveys under soil survey program.

In recognition of the increasing need for soil surveys by the States and other public agencies in connection with community planning and resource development for protecting and improving the quality of the environment, meeting recreational needs, conserving land and water resources, providing for multiple uses of such resources, and controlling and reducing pollution from sediment and other pollutants in areas of rapidly changing uses, including farmlands being shifted to other uses, resulting from rapid expansions in the uses of land for industry, housing, transportation, recreation, and related services, it is the sense of Congress that the soil survey program of the United States Department of Agriculture should be conducted so as to make available soil surveys to meet such needs of the States and other public agencies in connection with community planning and resource development. (Pub. L. 89–560, § 1, Sept. 7, 1966, 80 Stat. 706.)

§ 3272. Cooperative assistance to State and other public agencies; types of assistance; private engineering services.

In order to provide soil surveys to assist States, their political subdivisions, soil and water conservation districts, towns, cities, planning boards and commissions, community development districts, and other public agencies in community planning and resource development for the protection and improvement of the quality of the environment, recreational development, the conservation of land and water resources, the development of multiple uses of such resources, and the control and prevention of pollution from sediment and other pollutants in areas of rapidly changing uses, including farm and nonfarm areas, the Secretary of Agriculture shall, upon the request of a State or other public agency, provide by means of such cooperative arrangements with the State or other public agency as he may deem advisable, the following assistance with respect to such areas and purposes:

(1) the making of studies and reports necessary for the classification and interpretation of kinds of soil;

(2) an intensification of the use and benefits of the National Cooperative Soil Survey;

(3) the furnishing of technical and other assistance needed for use of soil surveys; and

(4) consultation with other Federal agencies participating or assisting in the planning and development of such areas in order to assure the coordination of the work under this chapter with the related work of such other agencies.

The provision by the Secretary of such assistance shall not interfere with the furnishing of engineering services by private engineering firms or consultants for on-site sampling and testing of sites or for design and construction of specific engineering works. (Pub. L. 89–560, § 2, Sept. 7, 1966, 80 Stat. 706.)

§ 3273. Contributions of State or other public agencies toward the cost of soil surveys.

It is further the sense of the Congress that the Secretary shall make a reasonable effort to assure that the contributions of any State or other public agency under any cooperative agreement which may be entered into between the Secretary and such State or other public agency with respect to a soil survey shall be a substantial portion of the cost of such soil survey. (Pub. L. 89–560, § 3, Sept. 7, 1966, 80 Stat. 706.)

§ 3274. Authorization of appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter, such sums to remain available until expended. (Pub. L. 89–560, § 4, Sept. 7, 1966, 80 Stat. 706.)

56. Solid Waste Disposal Act (1965)

42 U.S.C. 3251–3259

§ 3251. Congressional findings and declaration of purpose.

(a) The Congress finds—

(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass of material discarded by the purchaser of such products;

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

(4) that inefficient and improper methods of disposal of solid wastes result in scenic blights, create serious hazards to the public health, including pollution of air and water resources, accident hazards, and increase in rodent and insect vectors of disease, have an adverse effect on land values, create public nuisances, otherwise interfere with community life and development;

(5) that the failure or inability to salvage and reuse such materials economically results in the unnecessary waste and depletion of our natural resources; and

(6) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid-waste disposal practices.

(b) The purposes of this chapter therefore are—

(1) to promote the demonstration, construction, and application of solid waste management and resource recovery systems which preserve and enhance the quality of air, water, and land resources;

(2) to provide technical and financial assistance to States and local governments and interstate agencies in the planning and development of resource recovery and solid waste disposal programs;

(3) to promote a national research and development program for improved management techniques, more effective organizational arrangements, and new and improved methods of collection, separation, recovery, and recycling of solid wastes, and the environmentally safe disposal of nonrecoverable residues;

(4) to provide for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal systems; and

(5) to provide for training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems.

(Pub. L. 89–272, title II, § 202, Oct. 20, 1965, 79 Stat. 997; Pub. L. 91–512, title I, § 101, Oct. 26, 1970, 84 Stat. 1227.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–512 added provisions setting forth purposes of this chapter as that of promoting recycling, local planning, and training functions.

§ 3252. Definitions.

When used in this chapter—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare; except that such term means the Secretary of the Interior with respect to problems of solid waste resulting from the extraction, processing, or utilization of minerals or fossil fuels where the generation, production, or reuse of such waste is or may be controlled within the extraction, processing, or utilization facility or facilities and where such control is a feature of the technology or economy of the operation of such facility or facilities.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(3) The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the disposal of solid wastes and serving two or more municipalities located in different States.

(4) The term "solid waste" means garbage, refuse, and other discarded solid materials, including solid-waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

(5) The term "solid-waste disposal" means the collection, storage, treatment, utilization, processing, or final disposal of solid waste.

(6) The term "construction", with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(7) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law with responsibility for the planning or administration of solid waste disposal, or an Indian tribe.

(8) The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste disposal.

(9) The term "recovered resources" means materials or energy recovered from solid wastes.

(10) The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(Pub. L. 89–272, title II, § 203, Oct. 20, 1965, 79 Stat. 998; Pub. L. 91–512, title I, § 102, Oct. 26, 1970, 84 Stat. 1228.)

AMENDMENTS

1970—Pars. (7)–(10). Pub. L. 91–512 added pars. (7)–(10).

§ 3253. Research, demonstrations, training and other activities.

(a) Authority of Secretary to conduct; encouragement, etc., of public and private agencies in the conduct of.

The Secretary shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

(2) the operation and financing of solid waste disposal programs;

(3) the reduction of the amount of such waste and unsalvageable waste materials;

(4) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes; and

(5) the identification of solid waste components and potential materials and energy recoverable from such waste components.

(b) Collection and dissemination of information; cooperation with public or private agencies; grants-in-aid; contracts.

In carrying out the provisions of the preceding subsection, the Secretary is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of, and other information pertaining to, such research and other activities, including appropriate recommendations in connection therewith;

(2) cooperate with public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and the conduct of such research and other activities; and

(3) make grants-in-aid to public or private agencies and institutions and to individuals for research, training projects, surveys, and demonstrations (including construction of facilities), and provide for the conduct of research, training, surveys, and demonstrations by contract with public or private agencies and institutions and with individuals; and such contracts for research or demonstrations or both (including contracts for construction) may be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in section 2353 of Title 10, except that the determination, approval, and certification required thereby shall be made by the Secretary.

(c) Provisions of grants or contracts to insure availability of information, uses, processes and patents; use of and adherence to Statement of Government Patent Policy.

Any grant, agreement, or contract made or entered into under this section shall contain provisions effective to insure that all information, uses, processes, patents and other developments resulting from any activity undertaken pursuant to such grant, agreement, or contract will be made readily available on fair and equitable terms to industries utilizing methods of solid-waste disposal and industries engaging in furnishing devices, facilities, equipment, and supplies to be used in connection with solid-waste disposal. In carrying out the provisions of this section, the Secretary and each department, agency, and officer of the Federal Government having functions or duties under this chapter shall make use of and adhere to the Statement of Government Patent Policy which was promulgated by the President in his memorandum of October 10, 1963. (3 CFR, 1963 Supp., p. 238.) (Pub. L. 89–272, title II, § 204, Oct. 20, 1965, 79 Stat. 998; Pub. L. 91–512, title I, § 103, Oct. 26, 1970, 84 Stat. 1228.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–512, § 103(a), added provisions relating to the recovery of usable materials or energy from solid waste, new and improved methods of solid waste collection, adverse health and welfare effects of the release into the environment of material present in solid waste along with methods to eliminate such effects, and the identification of solid waste components and potential materials and energy recoverable from such waste components.

Subsec. (d). Pub. L. 91–512, § 103(b), repealed subsec. (d) which limited the amount of any grant from the United States to two-thirds of the cost of construction of any facility under this chapter.

§ 3253a. Recovery of useful energy and materials.

(a) Special study; report to the President and the Congress.

The Secretary shall carry out an investigation and study to determine—

(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, and the impact of distribution of such resources on existing markets;

(2) changes in current product characteristics and production and packaging practices which would reduce the amount of solid waste;

(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

(4) the use of Federal procurement to develop market demand for recovered resources;

(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling, and conservation of such materials; and

(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items.

The Secretary shall from time to time, but not less frequently than annually, report the results of such investigation and study to the President and the Congress.

(b) Demonstration projects.

The Secretary is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a) of this section.

(c) Applicability of other sections.

Section 3253 (b) and (c) of this title shall be applicable to investigations, studies, and projects carried out under this section. (Pub. L. 89–272, title II, § 205, as added Pub. L. 91–512, title I, § 104(a), Oct. 26, 1970, 84 Stat. 1228.)

§ 3254. Encouragement of interstate and interlocal cooperation.

The Secretary shall encourage cooperative activities by the States and local governments in connection with solid-waste disposal programs; encourage, where practicable, interstate, interlocal, and regional planning for, and the conduct of, interstate,

interlocal, and regional solid-waste disposal programs; and encourage the enactment of improved and, so far as practicable, uniform State and local laws governing solid-waste disposal. (Pub. L. 89–272, title II, § 206, formerly § 205, Oct. 20, 1965, 79 Stat. 999, renumbered Pub. L. 91–512, title I, § 104(a), Oct. 26, 1970, 84 Stat. 1228.)

§ 3254a. Grants for State, interstate, and local planning.

(a) Authorization.

The Secretary may from time to time, upon such terms and conditions consistent with this section as he finds appropriate to carry out the purposes of this chapter, make grants to State, interstate, municipal, and intermunicipal agencies, and organizations composed of public officials which are eligible for assistance under section 461(g) of Title 40, of not to exceed 66⅔ per centum of the cost in the case of an application with respect to an area including only one municipality, and not to exceed 75 per centum of the cost in any other case, of—

(1) making surveys of solid waste disposal practices and problems within the jurisdictional areas of such agencies and

(2) developing and revising solid waste disposal plans as part of regional environmental protection systems for such areas, providing for recycling or recovery of materials from wastes whenever possible and including planning for the reuse of solid waste disposal areas and studies of the effect and relationship of solid waste disposal practices on areas adjacent to waste disposal sites,

(3) developing proposals for projects to be carried out pursuant to section 3254b of this title, or

(4) planning programs for the removal and processing of abandoned motor vehicle hulks.

(b) Application; contents.

Grants pursuant to this section may be made upon application therefor which—

(1) designates or establishes a single agency which may be an interdepartmental agency) as the sole agency for carrying out the purposes of this section for the area involved;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of planning essential to areawide planning for proper and effective solid waste disposal consistent with the protection of the public health and welfare, including such factors as population growth, urban and metropolitan development, land use planning, water pollution control, air pollution control, and the feasibility of regional disposal and resource recovery programs;

(3) sets forth plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this section;

(4) provides for submission of such reports of the activities of the agency in carrying out the purposes of this section, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this section and for keeping such records and affording such access thereto as he may find necessary; and

(5) provides for such fiscal-control and fund-accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the agency under this section.

(c) Coordination of solid waste disposal planning with other planning activities.

The Secretary shall make a grant under this section only if he finds that there is satisfactory assurance that the planning of solid waste disposal will be coordinated, so far as practicable, with and not duplicate other related State, interstate, regional, and local planning activities, including those financed in part with funds pursuant to section 461 of Title 40. (Pub. L. 89–272, title II § 207, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1229.)

§ 3254b. Grants for resource recovery systems and improved solid waste disposal facilities.

(a) Authorization.

The Secretary is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) Conditions of grant for the demonstration of a resource recovery system; Federal share.

(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of section 3254a(b)(2) of this title; (B) is consistent with the guidelines recommended pursuant to section 3254c of this title; (C) is designed to provide areawide resource recovery systems consistent with the purposes of this chapter, as determined by the Secretary, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) Conditions of grant for construction of solid waste disposal facility; Federal share.

(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Secretary for the purposes of this chapter, and (iii) is consistent with the guidelines recommended under section 3254c of this title, and

(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or re-

sources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) Establishment of procedure for awarding grants; considerations in making grants.

(1) The Secretary, within ninety days after Oct. 26, 1970, shall promulgate regulations establishing a procedure for awarding grants under this section which—

(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Secretary (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) Terms and conditions; non-Federal share.

A grant under this section—

(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) of this section applies, the first-year operation and maintenance costs;

(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B) for operating or maintenance costs;

(3) may not be made until the applicant has made provision satisfactory to the Secretary for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Secretary may require to properly carry out his functions pursuant to this chapter.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Secretary.

(f) Limitation on grants.

(1) Not more than 15 percent of the total of funds authorized to be appropriated under section 3259(a)(3) of this title for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

(2) The Secretary shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State. (Pub. L. 89–272, title II, § 208, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1230.)

§ 3254c. Recommendation by Secretary of guidelines; publication in Federal Register; recommendation by Secretary of model codes, ordinances, and statutes; issuance of information to appropriate agencies.

(a) The Secretary shall, in cooperation with appropriate State, Federal, interstate, regional, and local agencies, allowing for public comment by other interested parties, as soon as practicable after October 26, 1970, recommended to appropriate agencies and publish in the Federal Register guidelines for solid waste recovery, collection, separation, and disposal systems (including systems for private use), which shall be consistent with public health and welfare, and air and water quality standards and adaptable to appropriate land-use plans. Such guidelines shall apply to such systems whether on land or water and shall be revised from time to time.

(b)(1) The Secretary shall, as soon as practicable, recommend model codes, ordinances, and statutes which are designed to implement this section and the purposes of this chapter.

(2) The Secretary shall issue to appropriate Federal, interstate, regional, and local agencies information on technically feasible solid waste collection, separation, disposal, recycling, and recovery methods, including data on the cost of construction, operation, and maintenance of such methods. (Pub. L. 89–272, title II, § 209, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1232.)

§ 3254d. Grants to or contracts with eligible organization.

(a) Authorization.

The Secretary is authorized to make grants to, and contracts with, any eligible organization. For purposes of this section the term "eligible organization" means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

(b) Training projects; application; contents.

(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Secretary, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste disposal and resource recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste disposal and resource recovery equipment and facilities.

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon ap-

plication to the Secretary at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as is required by section 3254a(b) (4) and (5) of this title with respect to applications made under such section.

(c) Investigation and study by Secretary; report to the President and the Congress.

The Secretary shall make a complete investigation and study to determine—

(1) the need for additional trained State and local personnel to carry out plans assisted under this chapter and other solid waste and resource recovery programs;

(2) means of using existing training programs to train such personnel; and

(3) the extent and nature of obstacles to employment and occupational advancement in the solid waste disposal and resource recovery field which may limit either available manpower or the advancement of personnel in such field.

He shall report the results of such investigation and study, including his recommendations to the President and the Congress not later than one year after October 26, 1970. (Pub. L. 89–272, title II, § 210, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1232.)

§ 3254e. Applicability of solid waste disposal guidelines to Executive agencies.

(a)(1) If—

(A) an Executive agency (as defined in section 105 of Title 5) has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste disposal activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste disposal activities,

then such agency shall insure compliance with the guidelines recommended under section 3254c of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency which conducts any activity—

(A) which generates solid waste, and

(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this chapter in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this chapter in the disposal of such waste.

(4) The President shall prescribe regulations to carry out this subsection.

(b) Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Secretary to insure compliance with guidelines recommended under section 3254c of this title and the purposes of this chapter. (Pub. L. 89–272, title II, § 211, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1233.)

§ 3254f. National disposal sites study for the storage and disposal of hazardous wastes.

The Secretary shall submit to the Congress no later than two years after October 26, 1970, a comprehensive report and plan for the creation of a system of national disposal sites for the storage and disposal of hazardous wastes, including radioactive, toxic chemical, biological, and other wastes which may endanger public health or welfare. Such report shall include: (1) a list of materials which should be subject to disposal in any such site; (2) current methods of disposal of such materials; (3) recommended methods of reduction, neutralization, recovery, or disposal of such materials; (4) an inventory of possible sites including existing land or water disposal sites operated or licensed by Federal agencies; (5) an estimate of the cost of developing and maintaining sites including consideration of means for distributing the short- and long-term costs of operating such sites among the users thereof; and (6) such other information as may be appropriate. (Pub. L. 89–272, title II, § 212, as added Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1233.)

§ 3255. Repealed. Pub. L. 91–512, title I, § 104(a), Oct. 26, 1970, 84 Stat. 1228.

Section, Pub. L. 89–272, title II, § 206, Oct. 20, 1965, 79 Stat. 999, authorized grants to State and interstate agencies for surveys of solid-waste disposal practices and problems, and for the development of solid-waste disposal plans.

§ 3256. Labor standards.

No grant for a project of construction under this chapter shall be made unless the Secretary finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by the Davis-Bacon Act, as amended, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with that Act; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40. (Pub. L. 89–272, title II, § 213, formerly § 207, Oct. 20, 1965, 79 Stat. 1000, renumbered Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1229.)

§ 3257. Authorities and responsibilities under other laws not affected.

This chapter shall not be construed as superseding or limiting the authorities and responsibilities,

under any other provisions of law, of the Secretary of Health, Education, and Welfare, the Secretary of the Interior, or any other Federal officer, department, or agency. (Pub. L. 89–272, title II, § 214, formerly § 208, Oct. 20, 1965, 79 Stat. 1000, renumbered Pub. L. 91–512, title I, § 104(b), Oct. 26, 1970, 84 Stat. 1229.)

§ 3258. General provisions.

(a) Payments of grants under this chapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Secretary may determine.

(b) No grant may be made under this chapter to any private profitmaking organization. (Pub. L. 89–272, title II, § 215, formerly § 209, Oct. 20, 1965, 79 Stat. 1001, renumbered and amended Pub. L. 91–512, title I, § 104(b), (c), Oct. 26, 1970, 84 Stat. 1229, 1233, 1234.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–512, § 104(c), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 91–512, § 104(c) added subsec. (b).

§ 3259. Authorization of appropriations.

(a)(1) There are authorized to be appropriated to the Secretary of Health, Education, and Welfare for carrying out the provisions of this chapter (including, but not limited to, section 3254b of this title), not to exceed $41,500,000 for the fiscal year ending June 30, 1971.

(2) There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the provisions of this chapter, other than section 3254b of this title, not to exceed $72,000,000 for the fiscal year ending June 30, 1972, not to exceed $76,000,000 for the fiscal year ending June 30, 1973, not to exceed $76,000,000 for the fiscal year ending June 30, 1974, and not to exceed $76,000,000 for the fiscal year ending June 30, 1975.

(3) There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out section 3254b of this title not to exceed $80,000,000 for the fiscal year ending June 30, 1972, not to exceed $140,000,000 for the fiscal year ending June 30, 1973, and not to exceed $140,000,000 for the fiscal year ending June 30, 1974.

(b) There are authorized to be appropriated to the Secretary of the Interior to carry out this chapter not to exceed $8,750,000 for the fiscal year ending June 30, 1971, not to exceed $20,000,000 for the fiscal year ending June 30, 1972, not to exceed $22,500,000 for the fiscal year ending June 30, 1973, and not to exceed $22,500,000 for the fiscal year ending June 30, 1974. Prior to expending any funds authorized to be appropriated by this subsection, the Secretary of the Interior shall consult with the Secretary of Health, Education, and Welfare to assure that the expenditure of such funds will be consistent with the purposes of this chapter.

(c) Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this chapter for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this chapter.

(d) Sums appropriated under this section shall remain available until expended. (Pub. L. 89–272, title II, § 216, formerly § 210, Oct. 20, 1965, 79 Stat. 1001; Pub. L. 90–574, title V, § 506, Oct. 15, 1968, 82 Stat. 1013; renumbered and amended Pub. L. 91–512, title I, §§ 104(b), 105, Oct. 26, 1970, 84 Stat. 1229, 1234.)

(As amended Pub. L. 93–14, Apr. 9, 1973, 87 Stat. 11; Pub. L. 93–611, Jan. 2, 1975, 88 Stat. 1974.)

AMENDMENTS

1975—Subsec. (a)(2). Pub. L. 93–611 authorized appropriation of $76,000,000 for fiscal year ending June 30, 1975.

1973—Subsec. (a)(2). Pub. L. 93–14, § 1(a), substituted "Administrator of the Environmental Protection Agency" for "Secretary of Health, Education, and Welfare" and authorized appropriation of $76,000,000 for fiscal year ending June 30, 1974.

Subsec. (a)(3). Pub. L. 93–14 § 1(b), substituted "Administrator of the Environmental Protection Agency" for "Secretary of Health, Education, and Welfare" and authorized appropriation of $140,000,000 for fiscal year ending June 30, 1974.

Subsec. (b). Pub. L. 93–14, § 1(c), authorized appropriation of $22,500,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a). Pub. L. 91–512, § 105, struck out provisions authorizing to be appropriated to the Secretary of Health, Education, and Welfare not to exceed $7,000,000, $14,000,000, $19,200,000, $20,000,000, and $19,750,000 for the fiscal years ending June 30, 1966, 1967, 1968, 1969, and 1970, respectively, added clause (1) authorizing to be appropriated to the Secretary to carry out this chapter, including but not limited to section 3254b of this title, not to exceed $41,500,000 for the fiscal year ending June 30, 1971, added clause (2) authorizing to be appropriated to the Secretary to carry out this chapter, other than section 3254b of this title, not to exceed $72,000,000 and $76,000,000 for the fiscal years ending June 30, 1972 and 1973, respectively, and added clause (3) authorizing to be appropriated to the Secretary to carry out section 3254b of this title, not to exceed $80,000,000, and $140,000,000, for the fiscal years ending June 30, 1972 and 1973, respectively.

Subsec. (b). Pub. L. 91–512, § 105, struck out provisions authorizing to be appropriated to the Secretary of the Interior not to exceed $3,000,000, $6,000,000, $10,800,000, $12,500,000, and $12,250,000 for the fiscal years ending June 30, 1966, 1967, 1968, 1969, and 1970, respectively, added provisions authorizing to be appropriated to the Secretary not to exceed $8,750,000, $20,000,000, and $22,500,000 for the fiscal years ending June 30, 1971, 1972, and 1973, respectively, and added requirement that the Secretary of the Interior consult with the Secretary of Health, Education, and Welfare before expending any of the authorized funds to assure that the expenditure of such funds is consistent with the purposes of this chapter.

Subsecs. (c), (d). Pub. L. 91–512, § 105, added subsecs. (c) and (d).

1968—Subsec. (a). Pub. L. 90–574, § 506(1), authorized appropriations not to exceed $19,750,000 for the fiscal year ending June 30, 1970.

Subsec. (b). Pub. L. 90–574, § 506(2), authorized appropriations not to exceed $12,250,000 for the fiscal year ending June 30, 1970.

DUPLICATION OF BENEFITS

No grant, award, or loan of assistance to any student under any Act amended by Pub. L. 90–574, which amended this section, to be considered a duplication of benefits for the purposes of section 1781 of Title 38, Veterans' Benefits, see section 504 of Pub. L. 90–574, set out as a note under section 1781 of Title 38.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3254b of this title.

57. Trans-Alaska Pipeline

43 U.S.C. 1651–1655

Sec.
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1654. Antitrust laws.
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§ 1651. Congressional findings and declaration.

The Congress finds and declares that:

(a) The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources.

(b) The Department of the Interior and other Federal agencies, have, over a long period of time, conducted extensive studies of the technical aspects and of the environmental, social, and economic impacts of the proposed trans-Alaska oil pipeline, including consideration of a trans-Canada pipeline.

(c) The earliest possible construction of a trans-Alaska oil pipeline from the North Slope of Alaska to Port Valdez in that State will make the extensive proven and potential reserves of low-sulfur oil available for domestic use and will best serve the national interest.

(d) A supplemental pipeline to connect the North Slope with a trans-Canada pipeline may be needed later and it should be studied now, but it should not be regarded as an alternative for a trans-Alaska pipeline that does not traverse a foreign country. (Pub. L. 93–153, title II, § 202, Nov. 16, 1973, 87 Stat. 584.)

SHORT TITLE

Section 201 of Pub. L. 93–153 provided that: "This title [which enacted this chapter] may be cited as the 'Trans-Alaska Pipeline Authorization Act'."

EXCLUSION OF PERSONS FROM TRANS-ALASKA PIPELINE ACTIVITIES ON BASIS OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR SEX PROHIBITED

Section 403 of Pub. L. 93–153 provided that: "The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II [this chapter]. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42]."

EQUITABLE ALLOCATION OF NORTH SLOPE CRUDE OIL

Section 410 of Pub. L. 93–153 provided that: "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

TRANS-CANADA PIPELINE; NEGOTIATIONS WITH CANADA; FEASIBILITY STUDY

Title III of Pub. L. 93–153 provided that:

"SEC. 301. The President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine—

"(a) the willingness of the Government of Canada to permit the construction of pipelines or other transportation systems across Canadian territory for the transport of natural gas and oil from Alaska's North Slope to markets in the United States, including the use of tankers by way of the Northwest Passage;

"(b) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the Governments of Canada and the United States and any party or parties involved with the construction, operation, and maintenance of pipelines or other transportation systems for the transport of such natural gas or oil;

"(c) the terms and conditions under which pipelines or other transportation systems could be constructed across Canadian territory;

"(d) the desirability of undertaking joint studies and investigations designed to insure protection of the environment, reduce legal and regulatory uncertainty, and insure that the respective energy requirements of the people of Canada and of the United States are adequately met;

"(e) the quantity of such oil and natural gas from the North Slope of Alaska for which the Government of Canada would guarantee transit; and

"(f) the feasibility, consistent with the needs of other sections of the United States, of acquiring additional energy from other sources that would make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area.

The President shall report to the House and Senate Committees on Interior and Insular Affairs the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action.

"SEC. 302. (a) The Secretary of the Interior is authorized and directed to investigate the feasibility of one or more oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that will deliver oil or gas to United States markets.

"(b) All costs associated with making the investigations authorized by subsection (a) shall be charged to any future applicant who is granted a right-of-way for one of the routes studied. The Secretary shall submit to the House and Senate Committees on Interior and Insular Affairs periodic reports of his investigation, and the

final report of the Secretary shall be submitted within two years from the date of this Act [Nov. 16, 1973].

"SEC. 303. Nothing in this title shall limit the authority of the Secretary of the Interior or any other Federal official to grant a gas or oil pipeline right-of-way or permit which he is otherwise authorized by law to grant."

§ 1652. Authorizations for construction.

(a) Congressional declaration of purpose.

The purpose of this chapter is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made and in limiting judicial review of the actions taken pursuant thereto.

(b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations.

The Congress hereby authorizes and directs the Secretary of the Interior and other appropriate Federal officers and agencies to issue and take all necessary action to administer and enforce rights-of-way, permits, leases, and other authorizations that are necessary for or related to the construction, operation, and maintenance of the trans-Alaska oil pipeline system, including roads and airstrips, as that system is generally described in the Final Environmental Impact Statement issued by the Department of the Interior on March 20, 1972. The route of the pipeline may be modified by the Secretary to provide during construction greater environmental protection.

(c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorization for construction.

Rights-of-way, permits, leases, and other authorizations issued pursuant to this chapter by the Secretary shall be subject to the provisions of section 185 of Title 30, as amended by Pub. L. 93–153 (except the provisions of subsection (h)(1), (k), (q), (w)(2), and (x)); all authorizations issued by the Secretary and other Federal officers and agencies pursuant to this chapter shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this chapter had not been enacted, and they may waive any procedural requirements of law or regulation which they deem desirable to waive in order to accomplish the purposes of this chapter. The direction contained in subsection (b) of this section shall supersede the provisions of any law or regulation relating to an administrative determination as to whether the authorizations for construction of the trans-Alaska oil pipeline shall be issued.

(d) National Environmental Policy Act of 1969 bypassed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review.

The actions taken pursuant to this chapter which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National Environmental Policy Act of 1969; and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following November 16, 1973, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this chapter, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after November 16, 1973. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

(e) Amendment or modification of rights-of-way, permits, leases, or other authorizations.

The Secretary of the Interior and the other Federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify any right-of-way, permit, lease, or other authorization issued under this chapter. (Pub. L. 93–153, title II, § 203, Nov. 16, 1973, 87 Stat. 584.)

§ 1653. Liability for damages.

(a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska.

(1) Except when the holder of the pipeline right-of-way granted pursuant to this chapter can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties,

public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to $50,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of $50,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

(5) Where the State of Alaska is the holder of a right-of-way or permit under this chapter, the State shall not be subject to the provisions of this subsection, but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to this subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) Control and removal of pollutants at expense of right-of-way holder.

If any area within or without the right-of-way or permit area granted under this chapter is polluted by any activities conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

(c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund.

(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act or war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 1321(p) of Title 33 before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be shall be subrogated under applicable State and

Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

(11) For purposes of this subsection only, the term "affiliate" includes—

(A) Any person owned or effectively controlled by the vessel owner or operator; or

(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

(i) stock interest, or

(ii) representation on a board of directors or similar body, or

(iii) contract or other agreement with other stockholders, or

(iv) otherwise; or

(C) Any person which is under common ownership or control with the vessel owner or operator.

(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization. (Pub. L. 93–153, title II, § 204, Nov. 16, 1973, 87 Stat. 586.)

§ 1654. Antitrust laws.

The grant of a right-of-way, permit, lease, or other authorization pursuant to this chapter shall grant no immunity from the operation of the Federal anti-trust laws. (Pub. L. 93–153, title II, § 205, Nov. 16, 1973, 87 Stat. 588.)

§ 1655. Roads and airports.

A right-of-way, permit, lease, or other authorization granted under section 1652(b) of this title for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip. (Pub. L. 93–153, title II, § 206, Nov. 16, 1973, 87 Stat. 588.)

58. Transportation of Explosives

18 U.S.C. 845

§ 845. Exceptions; relief from disabilities.

(a) Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term "destructive device"' in section 921(a)(4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of the United States.

(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section. (As amended Pub. L. 93–639, § 101, Jan. 4, 1975, 88 Stat. 2217.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–639, in par. (5), substituted provisions exempting commercially manufactured black powder in quantities not exceeding fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices for such exemption of black powder in quantities not exceeding five pounds.

59. United Nations Environment Program

Pub. L. 93–188 (87 Stat. 713)

AN ACT

To provide for participation by the United States in the United Nations environment program

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United Nations Environment Program Participation Act of 1973".

SEC. 2. It is the policy of the United States to participate in coordinated international efforts to solve environmental problems of global and international concern, and in order to assist the implementation of this policy, to contribute funds to the United Nations Environmental Fund for the support of international measures to protect and improve the environment.

SEC. 3. There is authorized to be appropriated $40,000,000 for contributions to the United Nations Environment Fund, which amount is authorized to remain available until expended, and which may be used upon such terms and conditions as the President may specify: *Provided,* That not more than $10,000,000 may be appropriated for use in fiscal year 1974.

Approved December 15, 1973.

60. Use of Off-Road Vehicles on Public Lands

Ex. Order 11644, 37 F.R. 2877

(See Executive Order 11644 under title III *Executive Orders*)

61. Weather Modification

15 U.S.C. 330–330e

Sec.

§ 330. Definitions.

As used in this chapter—

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, who is performing weather modification activities, except where acting solely as an employee, agent, or independent contractor of the Federal Government.

(3) The term "weather modification" means any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(4) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(Pub. L. 92–205, § 1, Dec. 18, 1971, 85 Stat. 735.)

§ 330a. Report requirement; form; information; time of submission.

No person may engage, or attempt to engage, in any weather modification activity in the United States unless he submits to the Secretary such reports with respect thereto, in such form and containing such information, as the Secretary may by rule prescribe. The Secretary may require that such reports be submitted to him before, during, and after any such activity or attempt. (Pub. L. 92–205, § 2, Dec. 18, 1971, 85 Stat. 736.)

§ 330b. Duties of Secretary.

(a) Records, maintenance; summaries, publication.

The Secretary shall maintain a record of weather modification activities, including attempts, which take place in the United States and shall publish summaries thereof from time to time as he determines.

(b) Public availability of reports, documents, and other information.

All reports, documents, and other information received by the Secretary under the provisions of this chapter shall be made available to the public to the fullest practicable extent.

(c) Disclosure of confidential information; prohibition; exceptions.

In carrying out the provisions of this section, the

Secretary shall not disclose any information referred to in section 1905 of Title 18 and is otherwise unavailable to the public, except that such information shall be disclosed—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) in any judicial proceeding under court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) to the public if necessary to protect their health and safety.

(Pub. L. 92–205, § 3, Dec. 18, 1971, 85 Stat. 736.)

§ 330c. Authority of Secretary.

(a) Information; reports and records; inspection; availability of data from any Federal agency as limitation of authority.

The Secretary may obtain from any person whose activities relate to weather modification by rule, subpena, or otherwise such information in the form of testimony, books, records, or other writings, may require the keeping and furnishing of such reports and records, and may make such inspection of the books, records, and other writings and premises and property of any person as may be deemed necessary or appropriate by him to carry out the provisions of this chapter, but this authority shall not be exercised to obtain any information with respect to which adequate and authoritative data are available from any Federal agency.

(b) Noncompliance; application of Attorney General; jurisdiction; orders; contempts.

In case of contumacy by, or refusal to obey a subpena served upon any person pursuant to this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the Attorney General, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Pub. L. 92–205, § 4, Dec. 18, 1971, 85 Stat. 736.)

§ 330d. Violation; penalty.

Any person who knowingly and willfully violates section 330a of this title, or any rule issued thereunder, shall upon conviction thereof be fined not more than $10,000. (Pub. L. 92–205, § 5, Dec. 18, 1971, 85 Stat. 736.)

§ 330e. Authorization of appropriations.

There are authorized to be appropriated $150,000 for the fiscal year ending June 30, 1972, and $200,000 each for the fiscal years 1973, 1974, 19, 19, and 19, to carry out the provisions of this chapter. (Pub. L. 92–205, § 6, Dec. 18, 1971, 85 Stat. 736, amended Pub. L. 93–436, Oct. 5, 1974, 88 Stat. 1212.)

62. Wild and Scenic Rivers Act

16 U.S.C. 1271–1287

Sec.

§ 1271. Congressional declaration of policy.

It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. (Pub. L. 90–542, § 1(b), Oct. 2, 1968, 82 Stat. 906.)

§ 1272. Congressional declaration of purpose.

The purpose of this chapter is to implement the policy set out in section 1271 of this title by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time. (Pub. L. 90–542, § 1(c), Oct. 2, 1968, 82 Stat. 906.)

§ 1273. National wild and scenic rivers system; Congressional authorization for inclusion; designation by State legislatures; permanent administration by States; application for inclusion by Governors; satisfaction of criteria; eligibility for inclusion.

(a) The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned without expense to the United States, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this chapter and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line.

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1271 of this title. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

(Pub. L. 90–542, § 2, Oct. 2, 1968, 82 Stat. 906.)

§ 1274. Component rivers and adjacent lands; establishment of boundaries; classification; development plans.

(a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) CLEARWATER, MIDDLE FORK, IDAHO.—The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

(2) ELEVENTH POINT, MISSOURI.—The segment of the river extending downstream from Thomasville to State Highway 142; to be administered by the Secretary of Agriculture.

(3) FEATHER, CALIFORNIA.—The entire Middle Fork downstream from the confluence of its tributary streams one kilometer south of Beckworth, California; to be administered by the Secretary of Agriculture.

(4) RIO GRANDE, NEW MEXICO.—The segment extending from the Colorado State line downstream to the State Highway 96 crossing, and the lower four miles of the Red River; to be administered by the Secretary of the Interior.

(5) ROGUE, OREGON.—The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

(6) SAINT CROIX, MINNESOTA AND WISCONSIN.—The segment between the dam near Taylors Falls, Minnesota, and the dam near Gordon, Wisconsin, and its tributary, the Namekago, from Lake Namekago dowstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior: *Provided,* That except as may be required in connection with items (a) and (b) of this paragraph, no funds available to carry out the provisions of this chapter may be expended for the acquisition or development of lands in connection with, or for administration under this chapter of, that portion of the Saint Croix River between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, until sixty days after the date on which the Secretary has transmitted to the President of the Senate and Speaker of the House of Representatives a proposed cooperative agreement between the Northern States Power Company and the United States (a) whereby the company agrees to convey to the United States, without charge, appropriate interests in certain of its lands between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, including the company's right, title, and interest to approximately one hundred acres per mile, and (b) providing for the use and development of other lands and interests in land retained by the company between said points adjacent to the river in a manner which shall complement and not be inconsistent with the purposes for which the lands and interests in land donated by the company are administered under this chapter. Said agreement may also include provision for State or local governmental participation as authorized under subsection (e) of section 1281 of this title.

(7) SALMON, MIDDLE FORK, IDAHO.—From its origin to its confluence with the main Salmon River; to be administered by the Secretary of Agriculture.

(8) WOLF, WISCONSIN.—From the Langlade-Menominee County line downstream to Keshena Falls; to be administered by the Secretary of the Interior.

(9) LOWER SAINT CROIX, MINNESOTA AND WISCONSIN.—The segment between the dam near Taylors Falls and its confluence with the Mississippi River: *Provided,* (i) That the upper twenty-seven miles of this river segment shall be administered by the Secretary of the Interior; and (ii) That the lower twenty-five miles shall be designated by the Secretary upon his approval of an application for such designation made by the Governors of the State of Minnesota and Wisconsin.

(10) CHATTOOGA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA.—The Segment from 0.8 mile below Cashiers Lake in North Carolina to Tugaloo Reservoir, and the West Fork Chattooga River from its junction with Chattooga upstream 7.3 miles, as generally depicted on the boundary map entitled "Proposed Wild and Scenic Chattooga River and Corridor Boundary", dated August 1973; to be administered by the Secretary of Agriculture: *Provided,* That the Secretary of Agriculture shall take such action as is provided for under subsection (b) of this section within one year from May 10, 1974: *Provided further,* That for the purposes of this river, there are authorized to be appropriated not more than $2,000,000 for the acquisition of lands and interests in lands and not more than $809,000 for development.

(11) RAPID RIVER, IDAHO.—The segment from the headwaters of the main stem to the national forest boundary and the segment of the West Fork from the wilderness boundary downstream to the confluence with the main stem, as a wild river.

(12) SNAKE, IDAHO AND OREGON.—The segment from Hells Canyon Dam downstream to Pittsburgh Landing, as a wild river; and the segment from Pittsburgh Landing downstream to an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Willamette meridian, as a scenic river.

(13) FLATHEAD, MONTANA.—The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence to the South Fork; and the South Fork from its origin to the Hungry Horse reservoir, as generally depicted on the map entitled "Proposed Flathead Wild and Scenic River Boundary Location" dated February 1976; to be administered by agencies of the Departments of the Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) of this section shall be taken within one year from the date of enactment of this paragraph. For the purposes of this river, there are authorized to be appropriated not more than $6,719,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(14) MISSOURI, MONTANA.—The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as generally depicted on the boundary map entitled "Missouri Breaks Freeflowing River Proposal", dated October 1975, to be administered by the Secretary of the Interior. For the purposes of this river, there are authorized to be appropriated not more than $1,800,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(15) OBED, TENNESSEE.—The segment from the western edge of the Catoosa Wildlife Management Area to the confluence with the Emory River; Clear Creek from the Morgan County line to the confluence with the Obed River, Daddys Creek from the Morgan County line to the confluence with the Obed River; and the Emory River from the confluence with the Obed River to the Nemo bridge as generally depicted and classified on the stream classification map dated December 1973. The Secre-

tary of the Interior shall take such action, with the participation of the State of Tennessee as is provided for under subsection (b) within one year following the date of enactment of this paragraph. The development plan required by such subsection (b) shall include cooperative agreements between the State of Tennessee acting through the Wildlife Resources Agency and the Secretary of the Interior. Lands within the Wild and Scenic River boundaries that are currently part of the Catoosa Wildlife Management Area shall continue to be owned and managed by the Tennessee Wildlife Resources Agency in such a way as to protect the wildlife resources and primitive character of the area, and without further development of roads, campsites, or associated recreational facilities unless deemed necessary by that agency for wildlife management practices. The Obed Wild and Scenic River shall be managed by the Secretary of the Interior. For the purposes of carrying out the provisions of this Act with respect to this river, there are authorized to be appropriated such sums as may be necessary, but not to exceed $2,000,000 for the acquisition of lands or interests in lands and not to exceed $400,000 for development. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from October 2, 1968, establish detailed boundaries therefor (which boundaries shall include an average of not more than three hundred and twenty acres per mile on both sides of the river); determine which of the classes outlined in section 1273(b) of this title best fit the river or its various segments; and prepare a plan for necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives. (Pub. L. 90–542, § 3, Oct. 2, 1968, 82 Stat. 907.)

(As amended Pub. L. 92–560, § 2, Oct. 15, 1972, 86 Stat. 1174; Pub. L. 93–279, § 1(a), May 10, 1974, 88 Stat. 122; Pub. L. 94–199, § 3(a), Dec. 31, 1975, 89 Stat. 1117; Pub. L. 94–486, §§ 101, 201, 301, 601, Oct. 12, 1976, 90 Stat. 2327.

AMENDMENTS

1976—Sections 101, 201, 301, Pub. L. 94–486 added paragraphs 13, 14, and 15, respectively. Sec. 601 amended par. (a)(3).

1975—Subsecs. (a)(11), (12). Pub. L. 94–199 added subsecs. (a)(11) and (12).

1974—Subsec. (a)(10). Pub. L. 93–279 added par. (10).

1972—Subsec. (a)(9). Pub. L. 92–560 added par. (9).

SHORT TITLE

Section 1 of Pub. L. 92–560 provided: "That this Act [which enacted subsec. (a)(9) of this section and provisions set out as notes under this section] may be cited as the 'Lower Saint Croix River Act of 1972'."

ADMINISTRATION OF SNAKE RIVER AND RAPID RIVER AREAS

Section 3(b) of Pub. L. 94–199 provided that: "The segments of the Snake River and the Rapid River designated as wild or scenic river areas by this Act [sections 460gg to 460gg–13 of this title] shall be administered by the Secretary in accordance with the provisions of the Wild and Scenic Rivers Act (82 Stat. 906), as amended [section 1271 et seq. of this title] and the Secretary shall establish detailed boundaries of the Snake River segments thereof in accordance with subsection 3(b) of that Act [subsec. (b) of this section]: *Provided*, That the Secretary shall establish a corridor along the segments of the Rapid River and may not undertake or permit to be undertaken any activities on adjacent public lands which would impair the water quality of the Rapid River segment: *Provided further*, That the Secretary is authorized to make such minor boundary revisions in the corridors as he deems necessary for the provision of such facilities as are permitted under the applicable provisions of the Wild and Scenic Rivers Act (82 Stat. 906)."

LOWER SAINT CROIX, MINNESOTA AND WISCONSIN

Section 3 of Pub. L. 92–560 provided that: "The Secretary of the Interior shall, within one year following the date of enactment of this Act [Oct. 25, 1972], take with respect to the Lower Saint Croix River segment, such actions as is provided for under section 3(b) of the Wild and Scenic Rivers Act [subsec. (b) of this section]: *Provided*, That (a) the action required by such section shall be undertaken jointly by the Secretary and the appropriate agencies of the affected States; (b) the development plan required by such section shall be construed to be a comprehensive master plan which shall include, but not be limited to, a determination of the lands, waters, and interests therein to be acquired, developed, and administered by the agencies or political subdivisions of the affected States; and (c) such development plan shall provide for State administration of the lower twenty-five miles of the Lower Saint Croix River segment and for continued administration by the States of Minnesota and Wisconsin of such State parks and fish hatcheries as now lie within the twenty-seven-mile segment to be administered by the Secretary of the Interior."

LAND ACQUISITION

Section 4 of Pub. L. 92–560 provided that: "Notwithstanding any provision of the Wild and Scenic Rivers Act [this chapter] which limits acquisition authority within a river segment to be administered by a Federal agency, the States of Minnesota and Wisconsin may acquire within the twenty-seven-mile segment of the Lower Saint Croix River segment to be administered by the Secretary of the Interior such lands as may be proposed for their acquisition, development, operation, and maintenance pursuant to the development plan required by section 3 of this Act [this section]."

NAVIGATION AIDS

Section 5 of Pub. L. 92–560 provided that: "Nothing in this Act [see Short Title note hereunder] shall be deemed to impair or otherwise affect such statutory authority as may be vested in the Secretary of the Department in which the Coast Guard is operating or the Secretary of the Army for the maintenance of navigation aids and navigation improvements."

AUTHORIZATION OF APPROPRIATIONS; LIMITATION

Section 6 of Pub. L. 92–560, as amended by Pub. L. 93–621, § 2, Jan. 3, 1975, 88 Stat. 2096, provided that:

"(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [see Short Title note hereunder], but not to exceed $19,000,000 for the acquisition and development of lands and interests therein within the boundaries of the twenty-seven-mile segment of the Lower Saint Croix River segment to be administered by the Secretary of the Interior.

"(b) No funds otherwise authorized to be appropriated by this section shall be expended by the Secretary of the Interior until he has determined that the States of Minnesota and Wisconsin have initiated such land acquisition and development as may be proposed pursuant to the development plan required by section 3 of this Act [this section], and in no event shall the Secretary of the Interior expend more than $2,550,000 of the funds authorized to be appropriated by this section in the first

fiscal year following completion of the development plan required by section 3 of this Act [this section]. The balance of funds authorized to be appropriated by this section shall be expended by the Secretary of the Interior at such times as he finds that the States of Minnesota and Wisconsin have made satisfactory progress in their implementation of the development plan required by section 3 of this Act."

Public Law 94-486 contained the following provisions:

"SEC. 202. After consultation with the State and local governments and the interested public, the Secretary shall, pursuant to section 3(b) of the Wild and Scenic Rivers Act and within one year of enactment of this Act—

"(1) establish detailed boundaries of the river segment designated as a component of the National Wild and Scenic Rivers System pursuant to section 1 of this Act (hereinafter referred to as the "river area"): *Provided*, That the boundaries of the portion of the river area from Fort Benton to Coal Banks Landing and the portion of the river area within the boundaries of the Charles M. Russell National Wildlife Range shall be drawn to include only the river and its bed and exclude all adjacent land except significant historic sites and such campsites and access points as are deemed necessary by the Secretary, and to which the Secretary finds no reasonable alternative as set forth in the management plan required pursuant to clause (2) of this section; and

"(2) determine, in accordance with the guidelines in section 2(b) of the Wild and Scenic Rivers Act, which of the three classes—wild river, scenic river, or recreation river—best fit portions of the river segment, designate such portions in such classes, and prepare a management plan for the river area in accordance with such designation.

"SEC. 203. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") shall manage the river area pursuant to the provisions of this Act and the Wild and Scenic Rivers Act, and in accordance with the provisions of the Taylor Grazing Act (48 Stat. 1269), as amended (43 U.S.C. 315), under principles of multiple use and sustained yield, and with any other authorities available to him for the management and conservation of natural resources and the protection and enhancement of the environment, where such Act, principles, and authorities are consistent with the purposes and provisions of this Act and the Wild and Scenic Rivers Act.

"(b)(1) The Secretary may acquire land and interests in land only in accordance with the provisions of this Act and the Wild and Scenic Rivers Act and the limitations contained in section 6 of that Act and only: (A) at Fort Benton for the vistor facility as provided in subsection (g)(2) of this section; (B) at the site of Fort McKenzie; (C) in that portion of the river area downstream from Fort Benton to Coal Banks Landing for historic sites, campsites, and access points in accordance with section 202 (1) of this Act; and (D) in that portion of the river area downstream from Coal Banks Landing so as to provide, wherever practicable and necessary for the purposes of this Act and the Wild and Scenic Rivers Act, rim-to-rim protection for such portion.

"(2) In accordance with section 6(b) of the Wild and Scenic Rivers Act, the Secretary shall not acquire fee title to any lands by condemnation under the authority of that Act or this Act, except that the Secretary may use condemnation when necessary and within the limitations on acquisition set forth in clause (1) of this subsection to clear title, acquire scenic easements, or acquire such other easements as are reasonably necessary to give the public access to the river segment within the river area and to permit its members to traverse the length of said river area or of selected portions thereof.

"(3) The Secretary shall, to the extent feasible, give priority in expenditure of funds pursuant to this Act for the acquisition and development of campsites and historic sites, including the site of the visitor center at Fort Benton and the site of Fort McKenzie.

"(c) Consistent with the provisions of this Act and the Wild and Scenic Rivers Act, the Secretary may issue easements, licenses, or permits for rights-of-way through, over, or under the lands in Federal ownership within the river area, or for the use of such lands on such terms and conditions as are in accordance with the provisions of this Act, the Wild and Scenic Rivers Act, and other applicable law.

"(d) The Secretary is authorized to permit the construction of a bridge across the river in the general vicinity of the community of Winifred, Montana, in order to accommodate the flow of north-south traffic. Such construction shall be in accordance with a plan which is mutually acceptable to the Secretary and State and local highway officials, and which is consistent with the purposes of this Act and the Wild and Scenic Rivers Act.

"(e) To the extent and in a manner consistent with the purposes of the Wild and Scenic Rivers Act the Secretary shall permit such pumping facilities and associated pipelines as may be necessary to assure the continuation of an adequate supply of water from the Missouri River to the owners of lands adjacent to the river and for future agricultural use outside the river corridor. The Secretary is authorized to permit such pumping facilities and associated pipelines for use for fish, wildlife, and recreational uses outside the river corridor.

"(f) The Secretary shall permit hunting and fishing in the river area in accordance with applicable Federal and State laws, except that he may designate zones where, and periods when, no hunting, or fishing shall be permitted for reasons of public safety or administration.

"(g)(1) The Secretary, acting through the Bureau of Land Management, shall exercise management responsibilities in the river area for:

"(A) the grazing of livestock;

"(B) the application of the United States mining and mineral leasing laws;

"(C) the management of fish and wildlife habitat;

"(D) the diversion and use of water for agricultural and domestic purposes;

"(E) the acquisition of lands and interests therein;

"(F) the administration of public recreational uses of, and any historic sites and campsites in, the river area; and

"(G) all other management responsibilities except those set forth in paragraph (2) of this subsection.

"(2) The Secretary, acting through the National Park Service, shall be responsible for the construction, operation, and management of any visitor facility in or near Fort Benton which is found necessary in accordance with the management plan developed pursuant to section 202 and the provision, at such facility, of interpretive services for the historic, archeological, scenic, natural, and fish and wildlife resources of the area."

§ 1275. Additions to national wild and scenic rivers system.

(a) Reports by Secretaries of Interior and Agriculture; recommendations to Congress; contents of reports.

The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this

chapter. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in section 1276(a) (1) through (27) of this title no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers (i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and (ii) which possess the greatest proportion of private lands within their areas. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act.

Each report, including maps and illustrations, shall show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system. Each such report shall be printed as a Senate or House document.

(b) Study of report by affected Federal and State officials; recommendations and comments; transmittal to the President and Congress.

Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnished the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress.

(c) Publication in Federal Register.

Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of a State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register. (Pub. L. 90–542, § 4, Oct. 2, 1968, 82 Stat. 909; amended Pub. L. 94–486, § 501, Oct. 12, 1976. 90 Stat. 2330.)

AMENDMENT

1976—Sec. 501: deleted the last sentence of subsec. (b)..

§ 1276. Rivers constituting potential additions to the national wild and scenic rivers system.

(a) Enumeration of designated rivers.

The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

(1) Allegheny, Pennsylvania: The segment from its mouth to the town of East Brady, Pennsylvania.

(2) Bruneau, Idaho: The entire main stem.

(3) Buffalo, Tennessee: The entire river.

(4) Chattooga, North Carolina, South Carolina, and Georgia: The entire river.

(5) Clarion, Pennsylvania: The segment between Ridgway and its confluence with the Allegheny River.

(6) Delaware, Pennsylvania and New York: The segment from Hancock, New York, to Matamoras, Pennsylvania.

(7) Flathead, Montana: The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungary Horse Reservoir.

(8) Gasconade, Missouri: The entire river.

(9) Illinois, Oregon: The entire river.

(10) Little Beaver, Ohio: The segment of the North and Middle Forks of the Little Beaver River in Columbiana County from a point in the vicinity of Negly and Elkton, Ohio, downstream to a point in the vicinity of East Liverpool, Ohio.

(11) Little Miami, Ohio: That segment of the main stem of the river, exclusive of its tributaries, from a point at the Warren-Clermont County line at Loveland, Ohio, upstream to the sources of Little Miami including North Fork.

(12) Maumee, Ohio and Indiana: The main stem from Perrysburg, Ohio, to Fort Wayne, Indiana, exclusive of its tributaries in Ohio and inclusive of its tributaries in Indiana.

(13) Missouri, Montana: The segment between Fort Benton and Ryan Island.

(14) Moyie, Idaho: The segment from the Canadian border to its confluence with the Kootenai River.

(15) Obed, Tennessee: The entire river and its tributaries, Clear Creek and Daddys Creek.

(16) Penobscot, Maine: Its east and west branches.

(17) Pere Marquette, Michigan: The entire river.

(18) Pine Creek, Pennsylvania: The segment from Ansonia to Waterville.

(19) Priest, Idaho: The entire main stem.

(20) Rio Grande, Texas: The portion of the river between the west boundary of Hudspeth County and the east boundary of Terrell County on the United States side of the river: *Provided*, That before undertaking any study of this potential scenic river, the Secretary of the Interior shall determine, through the channels of appropriate executive agencies, that Mexico has no objection to its being included among the studies authorized by this chapter.

(21) Saint Croix, Minnesota and Wisconsin: The segment between the dam near Taylors Falls and its confluence with the Mississippi River.

(22) Saint Joe, Idaho: The entire main stem.

(23) Salmon, Idaho: The segment from the town of North Fork to its confluence with the Snake River.

(24) Skagit, Washington: The segment from the town of Mount Vernon to and including the mouth of Bacon Creek; the Cascade River between its mouth and the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the Glacier Peak Wilderness Area boundary at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the Glacier Peak Wilderness Area boundary.

(25) Suwannee, Georgia and Florida: The entire river from its source in the Okefenokee Swamp in Georgia to the gulf and the outlying Ichetucknee Springs, Florida.

(26) Upper Iowa, Iowa: The entire river.

(27) Youghiogheny, Maryland and Pennsylvania: The segment from Oakland, Maryland, to the Youghiogheny Reservoir, and from the Youghiogheny Dam downstream to the town of Connellsville, Pennsylvania.

(28) American, California: The North Fork from the Cedars to the Auburn Reservoir.

(29) Au Sable, Michigan: The segment downstream from Foot Dam to Oscoda, and upstream from Loud Reservoir to its source, including its principal tributaries and excluding Mio and Bamfield Reservoirs.

(30) Big Thompson, Colorado: The segment from its source to the boundary of Rocky Mountain National Park.

(31) Cache la Poudre, Colorado: Both forks from their sources to their confluence, thence the Cache la Poudre to the eastern boundary of Roosevelt National Forest.

(32) Cahaba, Alabama: The segment from its junction with United States Highway 31 south of Birmingham downstream to its junction with United States Highway 80 west of Selma.

(33) Clarks Fork, Wyoming: The segment from the Clark's Fork Canyon to the Crandall Creek Bridge.

(34) Colorado, Colorado and Utah: The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado.

(35) Conejos, Colorado: The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir.

(36) Elk, Colorado: The segment from its source to Clark.

(37) Encampment, Colorado: The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.

(38) Green, Colorado: The entire segment within the State of Colorado.

(39) Gunnison, Colorado: The segment from the upstream (southern) boundary of the Black Canyon of the Gunnison National Monument to its confluence with the North Fork.

(40) Illinois, Oklahoma: The segment from Tenkiller Ferry Reservoir upstream to the Arkansas-Oklahoma border, including the Flint and Barren Fork Creeks.

(41) John Day, Oregon: The main stem from Service Creek Bridge (at river mile 157) downstream to Tumwater Falls (at river mile 10).

(42) Kettle, Minnesota: The entire segment within the State of Minnesota.

(43) Los Pinos, Colorado: The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch.

(44) Manistee, Michigan: The entire river from its source to Manistee Lake, including its principal tributaries and excluding Tippy and Hodenpyl Reservoirs.

(45) Nolichuckey, Tennessee and North Carolina: The entire main stem.

(46) Owyhee, South Fork, Oregon: The main stem from the Oregon-Idaho border downstream to the Owyhee Reservoir.

(47) Piedra, Colorado: The Middle Fork and East Fork from their sources to their confluence, thence the Piedra to its junction with Colorado Highway 160.

(48) Shepaug, Connecticut: The entire river.

(49) Sipsey Fork, West Fork, Alabama: The segment, including its tributaries, from the impoundment formed by the Lewis M. Smith Dam upstream to its source in the William B. Bankhead National Forest.

(50) Snake, Wyoming: The segment from the southern bounaries of Teton National Park to the entrance to Palisades Reservoir.

(51) Sweetwater, Wyoming: The segment from Wilson Bar downstream to Spring Creek.

(52) Tuolumne, California: The main river from its source on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir.

(53) Upper Mississippi, Minnesota: The segment

from its source at the outlet of Itasca Lake to its junction with the northwestern boundary of the city of Anoka.

(54) Wisconsin, Wisconsin: The segment from Prairie du Sac to its confluence with the Mississippi River at Prairie du Chien.

(55) Yampa, Colorado: The segment within the boundaries of the Dinosaur National Monument.

(56) Dolores, Colorado: The segment of the main stem from Rico upstream to its source, including its headwaters; the West Dolores from its source, including its headwaters, downstream to its confluence with the main stem; and the segment from the west boundary, section 2, township 38 north, range 16 west, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment from one mile above Highway 90 to the confluence of the San Miguel River.

(57) Snake, Washington, Oregon, and Idaho: the segment from an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Willamette meridian, downstream to the town of Asotin, Washington.

(58) Housatonic, Connecticut: The segment from the Massachusetts-Connecticut boundary downstream to its confluence with the Shepaug River.

(b) Studies and reports.

(1) The studies of rivers named in subparagraphs (28) through (55) of subsection (a) of this section shall be completed and reports thereon submitted by not later than October 2, 1979: *Provided*, That with respect to the rivers named in subparagraphs (33), (50), and (51), the Secretaries shall not commence any studies until (i) the State legislature has acted with respect to such rivers or (ii) one year from January 3, 1975, whichever is earlier.

(2) The study of the river named in subparagraph (56) of subsection (a) of this section shall be completed and the report thereon submitted by not later than January 3, 1976.

(3) There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (28) through (56) such sums as may be necessary, but not more than $2,175,000.

(c) State participation.

The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on jointly with such agencies if request for such joint study is made by the State and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

(d) Continuing consideration by Federal agencies to potential national, wild, scenic and recreational river areas.

In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved. (As amended Pub. L. 93-279, § 1(b)(2), May 10, 1974, 88 Stat. 123; Pub. L. 93-621, § 1(a), (b), Jan. 3, 1975, 88 Stat. 2094, 2095; Pub. L. 94-199, § 5(a), Dec. 31, 1975, 89 Stat. 1118; Pub. L. 94-486 §§ 401, 701, Oct. 12, 1976, 90 Stat. 2330.)

AMENDMENTS

1976—Subsec. (a), Pub. L. 94-486, § 401, added par. (58); § 701 amended par. (47).

1975—Subsec. (a). Pub. L. 94-199 added par. (57).

1975—Subsec. (a). Pub. L. 93-621, § 1(a), added pars. (28) to (56).

Subsec. (b). Pub. L. 93-621, § 1(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 93-621, § 1(b), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 93-621, § 1(b), redesignated subsec. (c) as (d).

1974—Subsec. (b) Pub. L. 93-279 redesignated subsec. (c) as subsec. (b) Former subsec. (b) relating to the study of rivers named in subsec. (a) of this section for inclusion in the national wild and scenic river system and submission of reports to the President and the Congress, was incorporated in section 1275(a) of this title.

Subsec. (c). Pub. L. 93-279 redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 93-279 redesignated subsec. (d) as (c).

§ 1277. Land acquisition.

(a) Grant of authority to acquire; State and Indian lands; use of appropriated funds.

The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 1274 of this title, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation, and lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this chapter. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquistion of property for the purposes of this chapter.

(b) Curtailment of condemnation power in area 50 per centum or more of which is owned by Federal or State government.

If 50 per centum or more of the entire acreage

within a federally administered wild, scenic or recreational river area is owned by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this chapter. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) Curtailment of condemnation power in urban areas covered by valid and satisfactory zoning ordinances.

Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village, or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this chapter. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this chapter. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this chapter, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) Exchange of property.

The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 1274 of this title or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefor, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) Transfer of jurisdiction over Federally owned property to appropriate Secretary.

The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 1274 of this title or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate secretary jurisdiction over such lands for administration in accordance with the provisions of this chapter. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this chapter within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) Acceptance of donated land, funds, and other property.

The appropriate Secretary is authorized to accept donations of lands and interests in land, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g) Retained right of use and occupancy; termination; fair market value; improved property.

(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years or, in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this chapter. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term "improved property", as used in this chapter, means a detached, one-family dwelling (hereinafter referred to as "dwelling"), the construction of which was begun before January 1, 1967, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated. (Pub. L. 90–542, § 6, Oct. 2, 1968, 82 Stat. 912.)

§ 1278. Restrictions on water resources projects.

(a) Construction projects licensed by Federal Power Commission.

The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is designated in section 1274 of this title as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which

such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter.

Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 1273 of this title and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

(b) Construction projects on rivers designated for potential addition to the system.

The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 1276(a) of this title, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval—

(i) during the ten-year period following October 2, 1968, or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: *Provided*, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section 1273(a)(ii) of this title, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of approval of this chapter. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter.

(c) Activities in progress affecting river of the system; notice to Secretary.

The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this chapter, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 1276(a) of this title. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) Grants under Land and Water Conservation Fund Act of 1965.

Nothing in this section with respect to the making

of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965.

(As amended Pub. L. 93–279, § 1(b) (3), (4), May 10, 1974, 88 Stat. 123; Pub. L. 93–621, § 1(c), Jan. 3, 1975, 88 Stat. 2096. Pub. L. 94–407, Sept. 11, 1976.)

AMENDMENTS

1976—Pub. L. 94–407 added the last sentence in subsec. (a).

1975—Subsec. (b)(i). Pub. L. 93–621 added the proviso that if any Act provides a time period for study in excess of the three fiscal year period, that period shall be substituted for the three complete fiscal year period provision of cl. (i).

1974—Subsec. (b)(i). Pub. L. 93–279, § 1(b)(3), substituted provisions that construction projects may not be licensed or assisted before Oct. 2, 1978, or for a three year period following inclusion of a river in the list of rivers for potential addition to the national wild and scenic river system, unless, prior to that period, the Secretary of the Interior or the Secretary of Agriculture, as the case may be, determined that such river should not be so included and notified the Committees on Interior and Insular Affairs, before publication in the Federal Register, for provisions that such projects may not be licensed or assisted before Oct. 2, 1973, unless, prior to that period, the Secretary of the Interior or the Secretary of Agriculture, as the case may be, concluded that such river should not be so included and published notice to that effect in the Federal Register.

Subsec. (b)(ii). Pub. L. 93–279, § 1(b)(4), substituted "the report for which is submitted to the President and the Congress, is necessary" for "which is recommended to the President and the Congress for inclusion in the national wild and scenic rivers system, is necessary".

§ 1279. Withdrawal of public lands from entry, sale, or other disposition under public land laws.

(a) All public lands within the authorized boundaries of any component of the national wild and scenic rivers system which is designated in section 1274 of this title or which is designated after October 2, 1968, for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 1276(a) of this title are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 1278(b) of this title. (Pub. L. 90–542, § 8, Oct. 2, 1968, 82 Stat. 915.)

§ 1280. Federal mining and mineral leasing laws.

(a) Nothing in this chapter shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that—

(i) all prospecting, mining operations, and all other activities on mining claims which, in the case of a component of the system designated in section 1274 of this title, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this chapter or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this chapter;

(ii) subject to valid existing rights, the perfection of, issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior or, in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this chapter or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the component in question.

(b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 1276(a) of this title are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 1278(b) of this title. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance of leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. (Pub. L. 90–542, § 9, Oct. 2, 1968, 82 Stat. 915.)

§ 1281. Administration.

(a) Public use and enjoyment of components; protection of features; management plans.

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

(b) Wilderness areas.

Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Wilderness Act, shall be subject to the provisions of both the Wilderness Act and this chapter with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter the more restrictive provisions shall apply.

(c) Areas administered by National Park Service and Fish and Wildlife Service.

Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this chapter and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of this chapter and such Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this chapter.

(d) Statutory authorities relating to national forests.

The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this chapter.

(e) Cooperative agreements with State and local governments.

The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands. (Pub. L. 90–542, § 10, Oct. 2, 1968, 82 Stat. 916.)

§ 1282. Assistance in financing State and local projects.

(a) The Secretary of the Interior shall encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965, needs and opportunities for establishing State and local wild, scenic and recreational areas. He shall also, in accordance with the authority contained in the Act of May 28, 1963, provide technical assistance and advice to, and cooperate with, States, political subdivisions, and private interests, including nonprofit organizations, with respect to establishing such wild, scenic and recreational river areas.

(b) The Secretaries of Agriculture and of Health, Education, and Welfare shall likewise, in accordance with the authority vested in them assist, advise, and cooperate with State and local agencies and private interests with respect to establishing such wild, scenic and recreational river areas. (Pub. L. 90–542, § 11, Oct. 2, 1968, 82 Stat. 916.)

§ 1283. Administration and management policies.

(a) Review by Secretaries and heads of agencies.

The Secretary of the Interior, the Secretary of Agriculture, and heads of other Federal agencies shall review administrative and management policies, regulations, contracts, and plans affecting lands under their respective jurisdictions which include, border upon, or are adjacent to the rivers listed in section 1276(a) of this title in order to determine what actions should be taken to protect such rivers during the period they are being considered for potential addition to the national wild and scenic rivers system. Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this chapter.

(b) Existing rights, privileges, and contracts affecting Federal lands.

Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without consent of said party.

(c) Water pollution.

The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Secretary of the Interior and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river. (Pub. L. 90–542, § 12, Oct. 2, 1968, 82 Stat. 917.)

§ 1284. Existing State jurisdiction and responsibilities.

(a) Fish and wildlife.

Nothing in this chapter shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

(b) Compensation for water rights.

The jurisdiction of the States and the United States over waters of any stream included in a national wild, scenic or recreation river area shall be

determined by established principles of law. Under the provisions of this chapter, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Reservation of waters for other purposes or in unnecessary quantities prohibited.

Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this chapter, or in quantities greater than necessary to accomplish these purposes.

(d) State jurisdiction over included streams.

The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this chapter to the extent that such jurisdiction may be exercised without impairing the purposes of this chapter or its administration.

(e) Interstate compacts.

Nothing contained in this chapter shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Rights of access to streams.

Nothing in this chapter shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scienic or recreational river area.

(g) Easements and rights-of-way.

The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided,* That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this chapter. (Pub. L. 90–542, § 13, Oct. 2, 1968, 82 Stat. 917.)

§ 1285. Claim and allowance of charitable deduction for contribution or gift of easement.

The claim and allowance of the value of an easement as a charitable contribution under section 170 of Title 26, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs, and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift. (Pub. L. 90–542, § 14, Oct. 2, 1968, 82 Stat. 918.)

§ 1286. Definitions.

As used in this chapter, the term—

(a) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing", as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided,* That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) "Scenic easement" means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement. (As amended Pub. L. 93–279, § 1(c), May 10, 1974, 88 Stat. 123.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–279 substituted "within the natual qualities of a designated wild, scenic o rrecreational river area" for "for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area" for "for the purpose of protecting the scenic view from the river".

§ 1287. Authorization of appropriations.

(a) There are hereby authorized to be appropriated, including such sums as have heretofore been appropriated, the following amounts for land acquisition for each of the rivers (described in section 1274 (a) of this title):

Clearwater, Middle Fork, Idaho, $2,909,800;
Eleven Point, Missouri, $4,906,500;
Feather Middle Fork, California, $3,935,700;
Rio Grande, New Mexico, $253,000;
Rogue, Oregon, $12,447,200;
St. Croix, Minnesota and Wisconsin, $11,768,550;
Salmon Middle Fork, Idaho, $1,237,100; and
Wolf, Wisconsin, $142,150.

(b) The authority to make the appropriations authorized in this section shall expire on Sept. 30, 1979. (As amended Pub. L. 93–279, § 1(d), May 10, 1974, 88 Stat. 123.)

AMENDMENTS

1974—Pub. L. 93–279 added subsecs. (a) and (b). Former unlettered provisions authorizing appropriation of amounts up to $17,000,000 for the acquisition of lands and interests in land, were stricken.

63. Wilderness Act

16 U.S.C. 1131–1136

§ 1131. National Wilderness Preservation System.

(a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas.

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this chapter or by a subsequent Act.

(b) Management of area included in System; appropriations.

The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

(c) Definition of wilderness.

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. (Pub. L. 88–577, § 2, Sept. 3, 1964, 78 Stat. 890.)

SHORT TITLE

Section 1 of Pub. L. 88–577 provided that: "This Act [which enacted this chapter] may be cited as the 'Wilderness Act'."

§ 1132. Extent of System.

(a) Designation of wilderness areas; filing of maps and descriptions with congressional committees; correction of errors; public records; availability of records in regional offices.

All areas within the national forests classified at least 30 days before September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall—

(1) Within one year after September 3, 1964, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this chapter: *Provided, however,* That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

(b) Review by Secretary of Agriculture of classifications as primitive areas; Presidential recommendations to Congress; approval of Congress; size of primitive areas; Gore Range-Eagles Nest Primitive Area, Colorado.

The Secretary of Agriculture shall, within ten years after September 3, 1964, review, as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has

been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after September 3, 1964, not less than two-thirds within seven years after September 3, 1964, and the remaining areas within ten years after September 3, 1964. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on September 3, 1964 shall continue to be administered under the rules and regulations affecting such areas on September 3, 1964 until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this chapter, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

(c) Review by Secretary of Interior of roadless areas of national park system and national wildlife refuges and game ranges and suitability of areas for preservation as wilderness; authority of Secretary of Interior to maintain roadless areas in national park system unaffected.

Within ten years after September 3, 1964 the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on September 3, 1964 and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after September 3, 1964, not less than two-thirds within seven years of September 3, 1964 and the remainder within ten years of September 3, 1964. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

(d) Conditions precedent to administrative recommendations of suitability of areas for preservation as wilderness; publication in Federal Register; public hearings; views of State, county, and Federal officials; submission of views to Congress.

(1) The Secretary of Agriculture and the Secre- of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness—

(A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

(B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided*, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

(e) Modification or adjustment of boundaries; public notice and hearings; administrative and executive recommendations to Congress; approval of Congress.

Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section. (Pub. L. 88–577, § 3, Sept. 3, 1964, 78 Stat. 891.)

WILDERNESS AREAS

Site of Wildernesses	*Date of Designation*
Agua Tibia Wilderness, Cleveland National Forest, California	Jan. 3, 1975
Agassiz Wilderness, Agassiz National Wildlife Refuge, Minnesota	Oct. 19, 1976
Alpine Lakes Wilderness, Mount Baker-Snoqualmie and Wenatchee National Forests, Washington	July 12, 1976
Beaver Creek Wilderness, Daniel Boone National Forest, Kentucky	Jan. 3, 1975
Bering Sea Wilderness, Bering Sea National Wildlife Refuge, Alaska	Oct. 23, 1970
Big Lake Wilderness, Big Lake National Wildlife Refuge, Arkansas	Oct. 19, 1976
Blackbeard Island Wilderness, Blackbeard Island National Wildlife Refuge, Georgia	Jan. 3, 1975
Bogoslof Wilderness, Bogoslof National Wildlife Refuge, Alaska	Oct. 23, 1970
Bosque del Apache Wilderness, Bosque del Apache National Wildlife Refuge, New Mexico	Jan. 3, 1975
Bradwell Bay Wilderness, Appalachicola National Forest, Florida	Jan. 3, 1975
Breton Wilderness, Breton National Wildlife Refuge, Louisiana	Jan. 3, 1975
Brigantine Wilderness, Brigantine National Wildlife Refuge, New Jersey	Jan. 3, 1975
Bristol Cliffs Wilderness, Green Mountain National Forest, Vermont	Jan. 3, 1975
Caney Creek Wilderness, Ouachita National Forest, Arkansas	Jan. 3, 1975
Cape Romain Wilderness, Cape Romain National Wildlife Refuge, South Carolina	Jan. 3, 1975
Cedar Keys Wilderness, Cedar Keys National Wildlife Refuge, Florida	Aug. 7, 1972
Chamisso Wilderness, Chamisso National Wildlife Refuge, Alaska	Jan. 3, 1975
Chase Lake Wilderness, Chase Lake National Wildlife Refuge, North Dakota	Jan. 3, 1975
Chassahowitzka Wilderness, Chassahowitzka National Wildlife Refuge, Florida	Oct. 19, 1976
Cohutta Wilderness, Chattahoochee and Cherokee National Forests, Georgia and Tennessee	Jan. 3, 1975
Crab Orchard Wilderness, Crab Orchard National Wildlife Refuge, Illinois	Oct. 19, 1976
Craters of the Moon National Wilderness, Craters of the Moon National Monument, Idaho	Oct. 23, 1970
Desolation Wilderness, Eldorado National Forest, Calif	Oct. 10, 1969
Dolly Sods Wilderness, Monongahela National Forest, West Virginia	Jan. 3, 1975
Eagle Cap Wilderness (Additional Lands), Wallowa and Whitman National Forests, Oregon	Oct. 21, 1972
Eagles Nest Wilderness, Arapaho and White River National Forests, Colorado	July 12, 1976
Ellicott Rock Wilderness, Sumter, Nantahala, and Chattahoochee National Forests, South Carolina, North Carolina, and Georgia	Jan. 3, 1975
Emigrant Wilderness, Stanislaus National Forest, California	Jan. 3, 1975
Farallon Wilderness, Farallon National Wildlife Refuge, California	Dec. 26, 1974
Fitzpatrick Wilderness, Shoshone National Forest, Wyoming	Oct. 19, 1976
Flat Tops Wilderness, Routt and White River National Forest, Colorado	Dec. 12, 1975
Florida Keys Wilderness, Key Deer, Great White Heron and Key West National Wildlife Refuges, Florida	Jan. 3, 1975
Forrester Island Wilderness, Forrester Island National Wildlife Refuge, Alaska	Oct. 23, 1970
Fort Niobrara Wilderness, Fort Niobrara National Wildlife Refuge, Nebraska	Oct. 19, 1976
Gee Creek Wilderness, Cherokee National Forest, Tennessee	Jan. 3, 1975
Great Swamp National Wildlife Refuge Wilderness, Morris County, New Jersey	Sept. 28, 1968
Hazy Islands Wilderness, Hazy Island National Wildlife Refuge, Alaska	Oct. 23, 1970
Hercules-Glades Wilderness, Mark Twain National Forest, Missouri	Oct. 19, 1976
Huron Islands Wilderness, Huron Islands National Wildlife Refuge, Michigan	Oct. 23, 1970
Island Bay Wilderness, Island Bay National Wildlife Refuge, Florida	Oct. 23, 1970
J. N. "Ding" Darling Wilderness, J. N. "Ding" Darling National Wildlife Refuge, Florida	Oct. 19, 1976
James River Face Wilderness, Jefferson National Forest, Virginia	Jan. 3, 1975
Joyce Kilmer-Slickrock Wilderness, Nantahala and Cherokee National Forests, North Carolina and Tennessee	Jan. 3, 1975
Kaiser Wilderness, Sierra National Forest, California	Oct. 19, 1976
Lacassine Wilderness, Lacassine National Wildlife Refuge, Louisiana	Oct. 19, 1976
Lake Woodruff Wilderness, Lake Woodruff National Wildlife Refuge, Florida	Oct. 19, 1976
Lassen Volcanic Wilderness, Lassen Volcanic National Park, California	Oct. 19, 1972
Lava Beds Wilderness, Lava Beds National Monument, California	Oct. 13, 1972
Lostwood Wilderness, Lostwood National Wildlife Refuge, North Dakota	Jan. 3, 1975
Lye Brook Wilderness, Green Mountain National Forest, Vermont	Jan. 3, 1975
Medicine Lake Wilderness, Medicine Lake National Wildlife Refuge, Montana	Oct. 19, 1976
Michigan Islands Wilderness, Michigan Islands National Wildlife Refuge, Michigan	Oct. 23, 1970
Mingo Wilderness, Mingo National Wildlife Refuge, Missouri	Oct. 19, 1976
Mission Mountains Wilderness, Flathead National Forest, Montana	Jan. 3, 1975
Monomoy Wilderness, Monomoy National Wildlife Refuge, Massachusetts	Oct. 23, 1970
Moosehorn Wilderness, Moosehorn National Wildlife Refuge, Maine	Oct. 23, 1970
Moosehorn Wilderness (Baring Unit), Moosehorn National Wildlife Refuge, Maine	Jan. 3, 1975
Mount Baldy Wilderness, Apache National Forest, Arizona	Oct. 23, 1970
Mount Jefferson Wilderness, Willamette, Deschutes, and Mount Hood National Forests, Oregon	Oct. 2, 1968
Okefenokee Wilderness, Okefenokee National Wildlife Refuge, Georgia	Oct. 1, 1974
Oregon Islands Wilderness, Oregon Islands National Wildlife Refuge, Oregon	Oct. 23, 1970
Otter Creek Wilderness, Monongahela National Forest, West Virginia	Jan. 3, 1975
Passage Key Wilderness, Passage Key National Wildlife Refuge, Florida	Oct. 23, 1970
Pelican Island Wilderness, Pelican Island National Wildlife Refuge, Florida	Oct. 23, 1970

Petrified Forest National Wilderness, Petrified Forest National Park, Arizona	Oct. 23, 1970
Pine Mountain Wilderness, Prescott and Tonto National Forests, Arizona	Feb. 15, 1972
Point Reyes Wilderness, Point Reyes National Seashore, California	Oct. 18, 1976
Presidential Range-Dry River Wilderness, White Mountain National Forest, New Hampshire	Jan. 3, 1975
Rainbow Lake Wilderness, Chequamegon National Forest, Wisconsin	Jan. 3, 1975
Red Rock Lakes Wilderness, Red Rock Lakes National Wildlife Refuge, Montana	Oct. 19, 1976
Saint Lazaria Wilderness, Saint Lazaria National Wildlife Refuge, Alaska	Oct. 23, 1970
St. Marks Wilderness. St. Marks Wildlife Refuge, Florida	Jan. 3, 1975
Salt Creek Wilderness, Bitter Lake National Wildlife Refuge, New Mexico	Oct. 23, 1970
San Gabriel Wilderness, Angeles National Forest, California	May 24, 1968
San Juan Wilderness, San Juan National Wildlife Refuge, Washington	Oct. 19, 1976
San Rafael Wilderness, Los Padres National Forest, California	Mar. 21, 1968
Scapegoat Wilderness, Helena, Lolo, and Lewis and Clark National Forests, Montana	Aug. 20, 1972
Seney Wilderness, Seney National Wildlife Refuge, Michigan	Oct. 23, 1970
Simeonof Wilderness, Simeonof National Wildlife Refuge, Alaska	Oct. 19, 1976
Sipsey Wilderness, Bankhead National Forest, Alabama	Jan. 3, 1975
Swanquarter Wilderness, Swanquarter National Wildlife Refuge, North Carolina	Oct. 19, 1976
Sycamore Canyon Wilderness, Coconino, Kaibab, and Prescott National Forests, Arizona	Mar. 6, 1972
Tamarac Wilderness, Tamarac National Wildlife Refuge, Minnesota	Oct. 19, 1976
Three Arch Rocks Wilderness, Three Arch Rocks National Wildlife Refuge, Oregon	Oct. 23, 1970
Tuxedni Wilderness, Tuxedni National Wildlife Refuge, Alaska	Oct. 23, 1970
UL Bend Wilderness, UL Bend National Wildlife Refuge, Montana	Oct. 19, 1976
Upper Buffalo Wilderness, Ozark National Forest, Arkansas	Jan. 3, 1975
Ventana Wilderness, Los Padres National Forest, California	Aug. 18, 1969
Washakie Wilderness (former South Absaroka Wilderness and Stratified Primitive Area), Shoshone National Forest, Wyoming	Oct. 9, 1972
Washington Islands Wilderness, Copalis, Flattery Rocks, and Quillayute Needles National Wildlife Refuges, Washington	Oct. 23, 1970
Weminuche Wilderness (former San Juan and Upper Rio Grande Primitive Area)	Jan. 3, 1975
West Sister Island Wilderness, West Sister Island National Wildlife Refuge, Ohio	Jan. 3, 1975
Wichita Mountains Wilderness, Wichita Mountains, National Wildlife Refuge, Oklahoma	Oct. 23, 1970
Wisconsin Islands Wilderness, Gravel Island and Green Bay National Wilderness Refuges, Wisconsin	Oct. 23, 1970
Wolf Island Wilderness, Wolf Island National Wildlife Refuge, Georgia	Jan. 3, 1975

CROSS REFERENCES

Glacier Peak Wilderness, Wenatchee and Mount Baker National Forests, California, extension of boundaries, see section 90e–1 of this title.

Pasayten Wilderness, Okanogan and Mount Baker National Forests, California, designation, see section 90e of this title.

DESIGNATION OF WILDERNESS STUDY AREAS WITHIN THE NATIONAL FOREST SYSTEM

Pub. L. 94–557, § 3, Oct. 19, 1976, 90 Stat. 2634, provided that:

"(a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890) and in accordance with the provisions of subsection 3(d) of that Act (78 Stat. 892, 893), relating to public notice, public hearings, and review by State and other agencies, the Secretary of Agriculture shall review, as to its suitability or nonsuitability for preservation as wilderness, each wilderness study area designated by or pursuant to subsection (b) of this section and report his findings to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to the designation as wilderness of each such area on which the review has been completed, together with a map thereof and a definition of its boundaries.

"(b) Wilderness study areas to be reviewed pursuant to this section include—

"(1) certain lands in the Angeles and San Bernardino National Forests in California, which comprise approximately fifty-two thousand acres, and which are generally depicted on a map entitled "Sheep Mountain Wilderness, Proposed", and dated February 1974. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendations with respect to the designation of the Sheep Mountain Wilderness Study Area as wilderness not later than two years after the date of enactment of this Act;

(2) certain lands in the Mendocino National Forest in California, which comprise approximately thirty-seven thousand acres, and which are generally depicted on a map entitled "Snow Mountain Wilderness Proposed", and dated June 1971. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendations with respect to the designation of the Snow Mountain Wilderness Study Area as wilderness not later than two years after the date of enactment of this Act;

(3) certain lands in the Mark Twain National Forest in Missouri, which comprise approximately eight thousand five hundred and thirty acres, and which are generally depicted on a map entitled "Bell Mountain Wilderness Study Area", and dated March 1976. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendations with respect to the designation of the Bell Mountain Wilderness Study Area as wilderness not later than five years after the date of enactment of this Act;

(4) certain lands in the Mark Twain National Forest in Missouri, which comprise approximately six thousand eight hundred and eighty-eight acres, and which are generally depicted on a map entitled "Paddy Creek Wilderness Study Area", and dated March 1976. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendation with respect to the designation of the Paddy Creek Wilderness Study Area as wilderness not later than five years after the date of enactment of this Act;

(5) certain lands in the Mark Twain National Forest in Missouri, which comprise approximately eight thousand four hundred and thirty acres, and which are generally depicted on a map entitled "Piney Creek Wilderness Study Area", and dated March 1976. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendation with respect to the designation of the Piney Creek Wilderness Study Area as wilderness not later than five years after the date of enactment of this Act;

(6) certain lands in the Mark Twain National Forest in Missouri, which comprise approximately four thousand one hundred and seventy acres, and which are generally depicted on a map entitled "Rockpile Mountain Wilderness Study Area", and dated March 1976. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendation with respect to the designation of the Rockpile Mountain Wilderness Study Area as wilderness not later than five years after the date of enactment of this Act;

"(7) certain lands in the Flathead and Lewis and Clark National Forests in Montana, which comprise approximately three hundred ninety-three thousand acres, and which are generally depicted on a map entitled 'Great Bear Wilderness-Proposed', and dated November 1975 (revised August 1976). The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendation with respect to the designation of the Great Bear Wilderness Study Area as wilderness not later than nineteen months after the date of enactment of this Act; and in conducting his review, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall identify any potential utility corridors within or contiguous to the study area, review any adverse effects such corridors may have on the wilderness character of such area, determine whether any such corridor is necessary, and, if a determination of necessity is made, select a route and design which will minimize such effects. Nothing in this section shall be construed as prohibiting the siting of any such corridor within the boundaries of any area recommended by the President for wilderness preservation pursuant to this Act or designated as wilderness by the Congress and;

"(8) certain lands in the Deer Lodge and Helena National Forests, in Montana, which comprise approximately seventy-seven thousand three hundred and forty-six acres and which are generally depicted on a map entitled 'Elkhorn Wilderness Study Area' and dated April 1976. The Secretary shall complete his review and report his findings to the President and the President shall submit to the United States Senate and the House of Representatives his recommendation with respect to the designation of the Elkhorn Wilderness Study area as wilderness not later than two years after the date of enactment of this Act.

"(c) Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of any wilderness study area or recommending the addition to any such area of any contiguous area predominately of wilderness value. Any recommendation of the President to the effect that such area or portion thereof should be designated as 'wilderness' shall become effective only if so provided by an Act of Congress.

"(d) Subject to existing private rights, the wilderness study areas designated by this Act shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System, except that such management requirement shall not extend beyond a period of four years from the date of submission to the Congress of the President's recommendation concerning the particular study area. Already established uses may be permitted to continue, subject to such restrictions as the Secretary of Agriculture deems desirable, in the manner and degree in which the same was being conducted on the date of enactment of this Act."

ALPINE LAKES WILDERNESS; FINDINGS AND PURPOSES; LAND ACQUISITION AND EXCHANGE; WILDERNESS MANAGEMENT PLAN; MULTIPLE USE PLAN; AUTHORITIES OF THE STATE OF WASHINGTON; AUTHORIZATION OF APPROPRIATIONS

Pub. 94–357, July 12, 1976, 90 Stat. 905, provided that:

"SEC. 2. (a) The Congress finds that:

"(1) The Cascade Mountains of the State of Washington between Stevens Pass and Snoqualmie Pass, commonly known as the Alpine Lakes region, comprise an environment of timbered valleys rising to rugged, snow-covered mountains, dotted with over seven hundred lakes, displaying unusual diversity of natural vegetation, and providing habitat for a variety of wildlife.

"(2) This region is abundant in its multiple resources, including an abundant source of pure water, commercial forests, an outdoor laboratory for scientific research and educational activities, and opportunities for great diversity of recreational use and enjoyment during all seasons of the year, in particular for quality hunting, fishing, motorized recreation, skiing, picnicking, camping, rock collecting, nature study, backpacking, horseback riding, swimming, boating, mountain climbing, and many others, together with the opportunity for millions of persons traveling through the periphery of the area to enjoy its unique values.

"(b) Purposes of this Act: In order to provide for public outdoor recreation and use and for economic utilization of commercial forest lands, geological features, lakes, streams and other resources in the Central Cascade Mountains of Washington State by present and future generations, there is hereby established, subject to valid existing rights an Alpine Lakes Area, including an Alpine Lakes Wilderness, an 'Intended Wilderness' and a management unit, comprising approximately nine hundred and twenty thousand acres.

"SEC. 3. (a) The Alpine Lakes Wilderness (hereafter referred to as 'the wilderness'), the 'Intended Wilderness', and the peripheral area (hereinafter referred to as the 'management unit'), shall comprise the areas so depicted on the map entitled 'Alpine Lakes Area' and dated June 1976, which shall be on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture, The Secretary of Agriculture (hereinafter referred to as the 'Secretary') shall, as soon as practicable after the enactment of this Act, publish in the Federal Register a detailed description and map showing the boundaries of the wilderness, 'Intended Wilderness', and the management unit.

"(b) The Secretary shall administer the Federal lands in the management unit in accordance with the laws, rules, and regulations applicable to the national forests in such a manner as to provide for the management of all of the resources of the management unit.

"(c) The Federal lands designated as the Alpine Lakes Wilderness shall be administered in accordance with the provisions of this Act and with the provisions of the Wilderness Act (78 Stat. 890), whichever is the more restrictive.

"(d) Federal lands depicted on the map and legal description as 'Intended Wilderness' shall become part of the Alpine Lakes Wilderness at such time as the adjacent non-Federal lands, interests or other property become wilderness according to the provisions of section 3(e) of this Act, at which times the Secretary shall file a map and legal description of such additions in the Federal Register.

"(e) Non-Federal lands depicted on the map and legal description as 'Wilderness' and 'Intended Wilderness' shall become part of the Alpine Lakes Wilderness when acquired by the Federal Government in conformance with the acquisition program required by section 4 of this Act.

"SEC. 4. (a) Within the boundaries of the wilderness and 'Intended Wilderness', the Secretary is authorized and directed to acquire with donated or appropriated funds, by gift, exchange, or otherwise, such non-Federal lands, interests, or any other property, in conformance with the provisions of section 4 of this Act: *Provided,* That any such lands, interests, or other property owned by or under the control of the State of Washington or any political subdivision thereof may be acquired only by donation or exchange. Nothing in this Act shall be construed to limit or diminish the existing authority of the Secretary to acquire lands and interests therein within the Alpine Lakes Area in accordance with established law. Notwithstanding any other provision of law, any Federal property located within the management unit may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the purposes of this Act. The Secretary shall exercise caution in exchanging land so as not to impair substantially the programmed allowable timber harvest of the Mount Baker-Snoqualmie and Wenatchee National Forest. Amounts appropriated from the Land and Water Conservation Fund shall be available for the acquisition of lands and interest for the purposes of this Act.

"(b) In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within the wilderness and 'Intended Wilderness', and convey to the owner of such property any national forest land within the State of Washington under the jurisdiction of the Secretary: *Provided,* That the Secretary may accept cash for or pay cash to the grantor in such an exchange in order to equalize minor differences in the values of the properties exchanged.

"(c)(1) As non-Federal lands and interests in the wilderness and 'Intended Wilderness' are acquired, and as they become protectable and administerable as wilderness, the lands shall become part of the Alpine Lakes Wilderness, and the Secretary shall publish from time to time a notice of such classification in the Federal Register. It is the intention of Congress that acquisition of the 'Intended Wilderness' shall be completed no later than three years after the date of enactment of this Act. At any time after three years from the date of enactment of this Act, an action may be instituted by an owner, all of whose lands within the boundaries of the 'Intended Wilderness' have been managed in such a way so as not to become unsuitable or unmanageable as wilderness (except for disturbance affecting a minor land area and found by the Secretary to have resulted from strictly accidental and unintentional circumstances), against the United States in the district court for the district in which such lands are located, to require the Secretary to acquire immediately all of said owner's interest in such lands, interests and property and to pay in accordance with this section 4 just compensation for such lands, interest, and property the plaintiff may have which are not yet acquired pursuant to this section 4. By February 1 of each year, the Secretary shall report in writing to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Senate, on the status of negotiations with private owners to effect exchanges and acquisition of non-Federal property.

"(2) The United States will pay just compensation to the owner of any lands and interests acquired by and pursuant to this Act. Such compensation shall be paid either: (A) by the Secretary of the Treasury from money appropriated pursuant to this Act from the Land and Water Conservation Fund, or from any other funds available for such use, upon certification to him by the Secretary, of the agreed negotiated value of such property, or the valuation of the property awarded by judgment, including interest at the rate of 8 per centum per annum from the date of the acquisition of the property or the date of filing an action according to the provisions of section 4(c)(1) of this Act, whichever is earlier, to the date of payment therefor; or (B) by the Secretary, if the owner of the land concurs, with any federally owned property available to him for purposes of exchange pursuant to subsection 4(b); or (C) by the Secretary using any combination of such money or federally owned property.

"(3) Just compensation shall be the fair market value of the lands and interests acquired by and pursuant to this Act, and shall be determined as of the date of acquisition: *Provided, however,* That the fair market value of those lands acquired from owners who, from the time of enactment of this Act to the time of acquisition of any such lands, have managed all lands within the 'Intended Wilderness' under their ownership so as not to make such lands unsuitable or unmanageable as wilderness (except for disturbance affecting a minor land area and found by the Secretary to have resulted from strictly accidental and unintentional circumstances), shall be the sum of (A) the value of such lands and interests at the date of acquisition, plus (B) any loss of value of timber from casualty, deterioration, disease, or other natural causes from January 1, 1976, to the date of acquisition, with all existing and lost or damaged timber valued at the highest of (i) its market value on the date of acquisition, (ii) its market value on January 1, 1976, or (iii) the mean average market value between those dates: *And provided further,* That nothing in this Act shall be deemed or construed to deny to owners of non-Federal lands, or to change their rights to access to such lands or to manage the same for any otherwise lawful purpose prior to acquisition thereof by the Secretary. For the purposes of this section, the owner of property is defined as the holder of fee title unless said property is subject to an agreement of sale entered into prior to April 1, 1976.

SEC. 5. In conjunction with the preparation of a wilderness management plan for the wilderness designated by this Act, the Secretary shall prepare a special study of the Enchantment Area of the Alpine Lakes Wilderness, taking into consideration its especially fragile nature, its ease of accessibility, its unusual attractiveness, and its resultant heavy recreational usage. The study shall explore the feasibility and benefits of establishing special provisions for managing the Enchantment Area to protect its fragile beauty, while still maintaining the availability of the entire area for projected recreational demand.

"SEC. 6. (a) Within two years of the enactment of this Act, the Secretary shall, in accordance with the provisions of this Act and other applicable acts governing the involvement required by this and other pertinent law, prepare, complete and begin to implement in accordance with the provision of subsection (b) a single multiple-use plan for the Federal lands in the management unit.

"(b) The management of the renewable resources will be in accordance with the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528–531), with other applicable laws and regulations of the United States, and will be such to obtain multiple use and sustained yield of the several products and services obtained therefrom.

"(c) The Secretary shall publish a notice of such plan in the Federal Register and shall transmit it to the President and to the United States House of Represenatives and to the Senate. The completed plan will take effect and will be implemented no earlier than ninety calendar days and no later than one hundred and fifty calendar days from the date of such transmittal.

"(d) The resources of the management unit shall be managed in accordance with the provisions of the multiple-use plan until such time as the plan may be revised according to the provisions of this section.

"(e) The Secretary shall review the multiple-use plan from time to time and, with full public involvement, shall make any changes he deems necessary to carry out the purposes of this Act.

"(f) The Secretary shall permit and encourage the use of renewable resources within the management unit, and nothing in this Act shall be construed to

prohibit the conduct of normal national forest programs during the formulation of, nor to prohibit inclusion of such programs in the multiple-use plan required by this section.

"SEC. 7. (a) The Secretary shall permit hunting and fishing on lands and waters under his jurisdiction in accordance with applicable Federal and State laws. Except in emergencies, any regulations pursuant to this subsection shall be issued only after consultation with the fish and game departments of the State of Washington. Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of these agencies.

"(b) Nothing in this Act shall deprive the State of Washington or any political subdivisions thereof of its right to exercise civil and criminal jurisdiction within the area or of its right to tax persons, corporations, franchises, or other non-Federal property, in or on lands and waters within the area.

"SEC. 8. There is hereby authorized to be appropriated for the acquisition of lands and interests to carry out the purposes of this Act, not more than $20,000,000 in fiscal year 1977, $17,000,000 in fiscal year 1978, and $20,000,000 in fiscal year 1979, such sums to remain available until appropriated without fiscal year limitation. To prepare the multiple-use plan required by section 6 of this Act, there is authorized to be appropriated not more than $500,000. Appropriation requests by the President to implement the multiple-use plan shall express in qualitative and quantitative terms the most rapid and judicious manner and methods to achieve the purposes of this Act. Amounts appropriated to carry out this Act shall be expended in accordance with the Budget Reform and Impoundment Control Act of 1974 (88 Stat. 297)."

CHERRY CREEK EXCLUSION AND HOOVER WILDERNESS; PRESERVATION AS AND ADDITION TO WILDERNESS; REVIEW; RECOMMENDATIONS TO CONGRESS

Pub. L. 93-632; § 2(b), Jan. 3, 1975, 88 Stat. 2154, provided in part that: "The area commonly called the Cherry Creek exclusion, depicted on such map [entitled 'Emigrant Wilderness—Proposed, 1970' on file in the Office of the Chief, Forest Service, Department of Agriculture] as Exclusion 2 and comprising approximately six thousand and forty-two acres, shall, in accordance with the provisions of subsection 3(d) of the Wilderness Act [subsec. (d) of this section], be reviewed by the Secretary of Agriculture as to its suitability or nonsuitability for preservation as wilderness in conjunction with his review of the potential addition to the Hoover Wilderness in Toiyabe National Forest. The recommendations of the President to the Congress in the potential addition to the Hoover Wilderness shall be accompanied by the President's recommendations on the Cherry Creek exclusion. The previous classification of the Emigrant Basin Primitive Area is hereby abolished with the exception of said Exclusion 2."

WILDERNESS AREAS IN EASTERN HALF OF UNITED STATES; CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY FOR DESIGNATION OF AREAS

Pub. L. 93-622, § 2, Jan. 3, 1975, 88 Stat. 2096, provided that:

"(a) The Congress finds that—

"(1) in the more populous eastern half of the United States there is an urgent need to identify, study, designate, and preserve areas for addition to the National Wilderness Preservation System;

"(2) in recognition of this urgent need, certain areas in the national forest system in the eastern half of the United States were designated by the Congress as wilderness in the Wilderness Act (78 Stat. 890) [this chapter]; certain areas in the national wildlife refuge system in the eastern half of the United States have been designated by the Congress as wilderness or recommended by the President for such designation, and certain areas in the national park system in the eastern half of the United States have been recommended by the President for designation as wilderness; and

"(3) additional areas of wilderness in the more populous eastern half of the United States are increasingly threatened by the pressures of a growing and more mobile population, large-scale industrial and economic growth, and development and uses inconsistent with the protection, maintenance, and enhancement of the areas' wilderness character.

"(b) Therefore, the Congress finds and declares that it is in the national interest that these and similar areas in the eastern half of the United States be promptly designated as wilderness within the National Wilderness Preservation System, in order to preserve such areas as an enduring resource of wilderness which shall be managed to promote and perpetuate the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation for the benefit of all of the American people of present and future generations."

WILDERNESS STUDY AREAS; REVIEW, REPORT, AND RECOMMENDATIONS FOR PRESERVATION AS WILDERNESS; DESIGNATION OF NATIONAL FOREST LANDS EAST OF 100th MERIDIAN AS STUDY AREAS AND FUTURE PRESERVATION AS WILDERNESS; MANAGEMENT OF EXISTING MULTIPLE-USE, SUSTAINED YIELD PROGRAMS; BOUNDARY CHANGES

Pub. L. 93-622, § 4, Jan. 3, 1975, 88 Stat. 2098, provided that:

"(a) In furtherance of the purposes of the Wilderness Act [this chapter] and in accordance with the provisions of subsection 3(d) of that Act [subsec. (d) of this section], the Secretary of Agriculture (hereinafter referred to as the 'Secretary') shall review, as to its suitability or nonsuitability for preservation as wilderness, each area designated by or pursuant to subsection (b) of this section and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as wilderness of each such area on which the review has been completed.

"(b) Areas to be reviewed pursuant to this section (hereinafter referred to as 'wilderness study areas'), as generally depicted on maps appropriately referenced, dated April 1974, include—

"(1) certain lands in the Ouachita National Forest, Arkansas, which comprise approximately five thousand seven hundred acres and are generally depicted on a map entitled 'Belle Starr Cave Wilderness Study Area';

"(2) certain lands in the Ouachita National Forest, Arkansas, which comprise approximately five thousand five hundred acres and are generally depicted on a map entitled 'Dry Creek Wilderness Study Area';

"(3) certain lands in the Ozark National Forest, Arkansas, which comprise approximately two thousand one hundred acres and are generally depicted on a map entitled 'Richland Creek Wilderness Study Area';

"(4) certain lands in the Appalachicola National Forest, Florida, which comprise approximately one thousand one hundred acres and are generally depicted as the 'Sopchoppy River Wilderness Study Area' on a map entitled 'Bradwell Bay Wilderness Area—Proposed';

"(5) certain lands in the Hiawatha National Forest, Michigan, which comprise approximately five thousand four hundred acres and are generally depicted on a map entitled 'Rock River Canyon Wilderness Study Area';

"(6) certain lands in the Ottawa National Forest, Michigan, which comprise approximately thirteen thousand two hundred acres and are generally depicted on a map entitled 'Sturgeon River Wilderness Study Area';

"(7) certain lands in the Pisgah National Forest, North Carolina, which comprise approximately one thousand one hundred acres and are generally depicted on a map entitled 'Craggy Mountain Wilderness Study Area';

"(8) certain lands in the Francis Marion National Forest, South Carolina, which comprise approximately one thousand five hundred acres and are generally depicted on a map entitled 'Wambaw Swamp Wilderness Study Area';

"(9) certain lands in the Jefferson National Forest, Virginia, which comprise approximately four thousand acres and are generally depicted on a map entitled 'Mill Creek Wilderness Study Area';

"(10) certain lands in the Jefferson National Forest, Virginia, which comprise approximately eight thousand four hundred acres and are generally depicted on a map entitled 'Mountain Lake Wilderness Study Area';

"(11) certain lands in the Jefferson National Forest, Virginia, which comprise approximately five thousand acres and are generally depicted on a map entitled 'Peters Mountain Wilderness Study Area';

"(12) certain lands in the George Washington National Forest, Virginia, which comprise approximately six thousand seven hundred acres and are generally depicted on a map entitled 'Ramsey's Draft Wilderness Study Area';

"(13) certain lands in the Chequamegon National Forest, Wisconsin, which comprise approximately six thousand three hundred acres and are generally depicted on a map entitled 'Flynn Lake Wilderness Study Area';

"(14) certain lands in the Chequamegon National Forest, Wisconsin, which comprise approximately four thousand two hundred acres and are generally depicted on a map entitled 'Round Lake Wilderness Study Area';

"(15) certain lands in the Monongahela National Forest, West Virginia, which comprise approximately thirty-six thousand three hundred acres and are generally depicted on a map entitled 'Cranberry Wilderness Study Area';

"(16) certain lands in the Cherokee National Forest, Tennessee, which comprise approximately four thousand five hundred acres and are generally depicted on a map entitled 'Big Frog Wilderness Study Area'; and

"(17) certain lands in the Cherokee National Forest, Tennessee, which comprise approximately fourteen thousand acres and are generally depicted as the 'Citico Creek Area' on a map entitled 'Joyce Kilmer-Slickrock Wilderness Area—Proposed';

"(c) Reviews shall be completed and the President shall make his recommendations to Congress within five years after enactment of this Act [Jan. 3, 1975].

"(d) Congress may, upon the recommendation of the Secretary of Agriculture or otherwise, designate as study areas, national forest system lands east of the 100th meridian other than those areas specified in subsection (b) of this section, for review as to suitability or nonsuitability for preservation as wilderness. Any such area subsequently designated as a wilderness study area after the enactment of this Act shall have its suitability or nonsuitability for preservation as wilderness submitted to Congress within ten years from the date of designation as a wilderness study area. Nothing in this Act shall be construed as limiting the authority of the Secretary of Agriculture to carry out management programs, development, and activities in accordance with the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215, 16 U.S.C. 528–531) within areas not designated for review in accordance with the provisions of this Act.

"(e) Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of any wilderness study area or recommending the addition to any such area of any contiguous area predominantly of wilderness value. Any recommendation of the President to the effect that such area or portion thereof should be designated as 'wilderness' shall become effective only if so provided by an Act of Congress."

AUTHORIZATION OF APPROPRIATIONS FOR ACQUISITION BY PURCHASE, ETC., OF AREAS DESIGNATED AS WILDERNESS AND REVIEW OF AREAS DESIGNATED AS WILDERNESS STUDY AREAS

Pub. L. 93–622, § 9, Jan. 3, 1975, 88 Stat. 2102, provided that: "There are hereby authorized to be appropriated an amount not to exceed $5,000,000 for the acquisition by purchase, condemnation, or otherwise of lands, waters, or interests therein located in areas designated as wilderness pursuant to section 3 of this Act and an amount not to exceed $1,700,000 for the purpose of conducting a review of wilderness study areas designated by section 4 of this Act."

INDIAN PEAKS AREA, COLORADO, PRESERVATION AS WILDERNESS; REVIEW; REPORT TO PRESIDENT; WILDERNESS DESIGNATION; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 92–528, Oct. 21, 1972, 86 Stat. 1050, provided: "That (a) the Secretary of Agriculture, in accordance with the provisions of subsection 3(d) of the Wilderness Act of September 3, 1964 (78 Stat. 892) [subsec. (d) of this section] relating to public notice, public hearings, and review by State and other agencies, shall review, as to its suitability or nonsuitability for preservation as wilderness, the area (or any portion thereof) located partially in Arapaho National Forest and partially in Roosevelt National Forest, containing approximately seventy-one thousand acres, lying generally south of the southern boundary of Rocky Mountain National Park, Colorado, and commonly referred to as the 'Indian Peaks Area,' as generally depicted on a map entitled 'Indian Peaks Study Area,' dated October 4, 1972, and shall report his findings to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to the designation of such area or portion thereof as 'wilderness,' together with maps and a definition of boundaries. Any recommendation of the President to the effect that such area or portion thereof should be designated as 'wilderness' shall become effective only if so provided by an Act of Congress.

"(b) The review required by this Act, including any reports and recommendations with respect thereto, shall, except to the extent otherwise provided in this Act, be conducted in accordance with the applicable provisions of the Wilderness Act [this chapter].

"SEC. 2. There is hereby authorized to be appropriated such amount as may be necessary to carry out the provisions of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228i–1, 271e, 272d, 273d, 459i–8, 460m–13, 460z–11, 460aa–4, 460dd–8, 460gg–5, 698d, 698*l* of this title.

§ 1133. Use of wilderness areas.

(a) Purposes of national forests, national park system, and national wildlife refuge system; other provisions applicable to national forest, Superior National Forest, and national park system.

The purposes of this chapter are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and—

(1) Nothing in this chapter shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215).

(2) Nothing in this chapter shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act (Public Law 607, Eighty-Fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this chapter shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this chapter shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with sections 1 and 2 to 4 of this title, the statutory authority under which the area was created, or any other Act of Congress which might

pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225); section 796(2); and the Act of August 21, 1935 (49 Stat. 666 of this title).

(b) Agency responsibility for preservation and administration to preserve wilderness character; public purposes of wilderness areas.

Except as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

(c) Prohibition provisions: commercial enterprise, permanent or temporary roads, mechanical transports, and structures or installations; exceptions: area administration and personal health and safety emergencies.

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

(d) Special provisions.

The following special provisions are hereby made:

Aircraft or motorboats; fire, insects, and diseases.

(1) Within wilderness areas designated by this chapter the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

Mineral activities, surveys for mineral value.

(2) Nothing in this chapter shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

Mining and mineral leasing laws; leases, permits, and licenses; withdrawal of minerals from appropriation and disposition.

(3) Notwithstanding any other provisions of this chapter, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this chapter as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prespecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this chapter as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter: *Provided*, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this chapter shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964, within the boundaries of wilderness areas designated by this chapter shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this chapter shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from dis-

position under all laws pertaining to mineral leasing and all amendments thereto.

Water resources, reservoirs, and other facilities; grazing.

(4) Within wilderness areas in the national forests designated by this chapter, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

Management of Boundary Waters Canoe Area, Superior National Forest, Minnesota; motorboats.

(5) Other provisions of this chapter to the contrary notwithstanding, the management of the Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, shall be in accordance with regulations established by the Secretary of Agriculture in accordance with the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the area, particularly in the vicinity of lakes, streams, and portages: *Provided*, That nothing in this chapter shall preclude the continuance within the area of any already established use of motorboats.

Commercial services.

(6) Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

State water laws exemption.

(7) Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

State jurisdiction of wildlife and fish in national forests.

(8) Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests. (Pub. L. 88–577, § 4, Sept. 3, 1964, 78 Stat. 893.)

§ 1134. State and private lands within wilderness areas.

(a) Access; exchange of lands; mineral interests restriction.

In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this chapter as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture: *Provided, however*, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) Customary means for ingress and egress to wilderness areas subject to mining claims or other occupancies.

In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

(c) Acquisition of lands.

Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this chapter as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress. (Pub. L. 88–577, § 5, Sept. 3, 1964, 78 Stat. 896.)

§ 1135. Gifts, bequests, and contributions.

(a) The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this chapter for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this chapter for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall become part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agrements, consistent with the policy of this chapter, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this chapter. (Pub. L. 88–577, § 6, Sept. 3, 1964, 78 Stat. 896.)

§ 1136. Annual reports to Congress.

At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make. (Pub. L. 88–577, § 7, Sept. 3, 1964, 78 Stat. 896.)

64. Youth Conservation Corps

16 U.S.C. 1701–1706

§ 1701. Congressional declaration of policy and purpose.

The Congress finds that the Youth Conservation Corps has demonstrated a high degree of success as a pilot program wherein American youth, representing all segments of society, have benefited by gainful employment in the healthful outdoor atmosphere of the national park system, the national forest system, other public land and water areas of the United States and by their employment have developed, enhanced, and maintained the natural resources of the United States, and whereas in so doing the youth have gained an understanding and appreciation of the Nation's environment and heritage equal to one full academic year of study, it is accordingly the purpose of this chapter to expand and make permanent the Youth Conservation Corps and thereby further the development and maintenance of the natural resources by America's youth, and in so doing to prepare them for the ultimate responsibility of maintaining and managing these resources for the American people. (Pub. L. 91–378, § 1, Aug. 13, 1970, 84 Stat. 794, amended Pub. L. 92–597, Oct. 27, 1972, 86 Stat. 1319; Pub. L. 93–408, Sept. 3, 1974, 88 Stat. 1066.)

AMENDMENTS

1974—Pub. L. 93–408 substantially reenacted existing provisions and added finding that the Youth Conservation Corps program be expanded and made permanent in view of the success of the pilot program.

1972—Pub. L. 92–597 substituted "areas of the United States" for "areas administered by the Secretary of the Interior and the Secretary of Agriculture".

§ 1702. Establishment.

(a) Age of participants.

To carry out the purposes of this chapter, there is established in the Department of the Interior and the Department of Agriculture a Youth Conservation Corps (hereinafter referred to as the "Corps"). The Corps shall consist of young men and women who are permanent residents of the United States, its territories, possessions, trust territories, or Commonwealth of Puerto Rico who have attained age fifteen but have not attained age nineteen, and whom the Secretary of the Interior or the Secretary of Agriculture may employ without regard to the civil service or classification laws, rules, or regulations, for the purpose of developing, preserving, or maintaining the lands and waters of the United States.

(b) Equal employment opportunity and employment; term.

The Corps shall be open to youth from all parts of the country of both sexes and youth of all social, economic, and racial classifications with all Corps members receiving compensation consistent with work accomplished, and with no person being employed as a member of the Corps for a term in excess of ninety days during any single year. (Pub. L. 91–378, § 2, Aug. 13, 1970, 84 Stat. 795, amended Pub. L. 92–597, Oct. 27, 1972, 86 Stat. 1319; Pub. L. 93–408, Sept. 3, 1974, 88 Stat. 1066.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–408 extended eligibility to permanent residents of Puerto Rico, removed the restriction that employment be in the summer months only, and substituted "waters of the United States" for "waters of the United States under his jurisdiction".

Subsec. (b). Pub. L. 93–408 substituted "from all parts of the country of both sexes and youth of all social, economic, and racial classifications with all Corps members receiving compensation consistent with work accomplished, and with" for "of both sexes and youth of all social, economic, and racial classifications, with".

1972—Subsec. (a). Pub. L. 92–597 substituted "established in the Department of the Interior and the Department of Agriculture a Youth Conservation" and "under his jurisdiction" and "hereby established in the Department of the Interior and the Department of Agriculture a three-year pilot program designated as the Youth Conservation" and "under the jurisdiction of the appropriate Secretary" respectively, and extended eligibility to permanent residents of trust territories.

§ 1703. Duties and functions of Secretary of the Interior and Secretary of Agriculture.

(a) Programs and projects; conditions of employment; regulations; use of facilities by educational institutions.

In carrying out this chapter, the Secretary of the Interior and the Secretary of Agriculture shall—

(1) determine the areas under their administrative jurisdictions which are appropriate for carrying out the programs using employees of the Corps;

(2) determine with other Federal agencies the areas under the administrative jurisdiction of these agencies which are appropriate for carrying out programs using members of the Corps, and determine and select appropriate work and education programs and projects for participation by members of the Corps;

(3) determine the rates of pay, hours, and other conditions of employment in the Corps, except that all members of the Corps shall not be deemed

to be Federal employees other than for the purpose of chapter 171 of Title 28, and chapter 81 of Title 5.

(4) provide for such transportation, lodging, subsistence, and other services and equipment as they may deem necessary or appropriate for the needs of members of the Corps in their duties;

(5) promulgate regulation to insure the safety, health, and welfare of the Corps members; and

(6) provide to the extent possible, that permanent or semipermanent facilities used as Corps camps be made available to local schools, school districts, State junior colleges and universities, and other education institutions for use as environmental/ecological education camps during periods of nonuse by the Corps program.

Costs for operations maintenance, and staffing of Corps camp facilities during periods of use by non-Corps programs as well as any liability for personal injury or property damage stemming from such use shall be the responsibility of the entity or organization using the facility and shall not be a responsibility of the Secretaries or the Corps.

(b) Use of unoccupied Federal facilities and equipment.

Existing but unoccupied Federal facilities and surplus or unused equipment (or both), of all types including military facilities and equipment, shall be utilized for the purposes of the Corps, where appropriate and with the approval of the Federal agency involved. To minimize transportation costs, Corps members shall be employed on conservation projects as near to their places of residence as is feasible.

(c) Contracts for the operation of projects.

The Secretary of the Interior and the Secretary of Agriculture may contract with any public agency or organization or any private nonprofit agency or organization which has been in existence for at least five years for the operation of any Youth Conservation Corps project. (Pub. L. 91–378, § 3, Aug. 13, 1970, 84 Stat. 795, amended Pub. L. 92–597, Oct. 27, 1972, 86 Stat. 1319; Pub. L. 93–408, Sept. 3, 1974, 88 Stat. 1067.)

AMENDMENTS

1974—Pub. L. 93–408 reenacted existing provisions with minor changes.

1972—Pub. L. 92–597 substantially reenacted existing provisions and added provisions requiring the Secretary of the Interior and the Secretary of Agriculture to determine and select appropriate work and education programs and projects for participation by members of the Corps and to provide that permanent or semipermanent facilities used as Corps camps be made available to local schools, school districts, and such other institutions for use as environmental education camps during periods of nonuse by the Corps program, that the costs of operation, maintenance, and staffing of Corps camp facilities during periods of use by non-Corps programs and liabilities arising from such use shall be the responsibility of the organization using the facility and, struck out provisions requiring preparation and submission to the President of a report not later than Aug. 13, 1971, for transmittal to the Congress for review and appropriate action, and that the provisions of Title II of the Revenue and Expenditure Control Act of 1968 shall not apply to appointments made to the Corps, to temporary supervisory personnel, or to temporary program support staff.

§ 1704. Grants to States.

(a) Projects for preservation of non-Federal public lands and waters; definition;

The Secretary of the Interior and the Secretary of Agriculture shall jointly establish a program under which grants shall be made to States to assist them in meeting the cost of projects for the employment of young men and women to develop, preserve, and maintain non-Federal public lands and waters within the States. For purposes of this section, the term "States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

(b) Application requirements for grants; approval by Secretaries.

(1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary of the Interior and the Secretary of Agriculture. Such application shall be in such form, and submitted in such manner, as the Secretaries shall jointly by regulation prescribe, and shall contain—

(A) assurances satisfactory to the Secretaries that individuals employed under the project for which the application is submitted shall (i) have attained the age of fifteen but not attained the age of nineteen, (ii) be permanent residents of the United States or its territories, possessions, or the Trust Territory of the Pacific Islands, (iii) be employed without regard to the personnel laws, rules, and regulations applicable to full-time employees of the applicant, (iv) be employed for a period of not more than ninety days in any calendar year, and (v) be employed without regard to their sex or social, economic, or racial classification; and

(B) such other information as the Secretaries may jointly by regulation prescribe.

(2) The Secretaries may approve applications which they determine (A) to meet the requirements of paragraph (1), and (B) are for projects which will further the development, preservation, or maintenance of non-Federal public lands or waters within the jurisdiction of the applicant.

(c) Limitation on the amount of grant.

(1) The amount of any grant under this section shall be determined jointly by the Secretaries, except that no grant for any project may exceed 80 per centum of the cost (as determined by the Secretaries) of such project.

(2) Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretaries find necessary.

(d) Appropriation percentage.

Thirty per centum of the sums appropriated under section 1706 of this title for any fiscal year shall be made available for grants under this section for such fiscal year. (Pub. L. 91–378, § 4, Aug. 13, 1970, 84 Stat. 796, amended Pub. L. 92–597, Oct. 27, 1972, 86 Stat. 1320; Pub. L. 93–408, Sept. 3, 1974, 88 Stat. 1067.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–408 substituted "jointly establish a program" for "jointly establish a pilot grant program".

1972—Pub. L. 92–579 substituted provisions relating to pilot grant program for state projects for provisions relating to Secretarial reports.

§ 1705. Reports to President and Congress.

The Secretary of the Interior and Secretary of Agriculture shall annually prepare a joint report detailing the activities carried out under this chapter and providing recommendations. Each report for a program year shall be submitted concurrently to the President and the Congress not later than April 1 following the close of that program year. (Pub. L. 91–378, § 5, Aug. 13, 1970, 84 Stat. 796, amended Pub. L. 92–597, Oct. 27, 1972, 86 Stat. 1321; Pub. L. 93–408, Sept. 3, 1974, 88 Stat. 1068.)

AMENDMENTS

1974—Pub. L. 93–408 substituted "program year shall be submitted concurrently to the President and the Congress not later than April 1 following the close of that program year" for "fiscal year shall be submitted concurrently to the President and the Congress not later than one hundred and eighty days following the close of that fiscal year".

1972—Pub. L. 92–579 submitted provisions relating to Secretarial reports for provisions relating to authorization of funds.

§ 1706. Authorization of appropriations.

There are authorized to be appropriated amounts not to exceed $60,000,000 for each fiscal year, which amounts shall be made available to the Secretary of the Interior and the Secretary of Agriculture to carry out the purposes of this chapter. Notwithstanding any other provision of law, funds appropriated for any fiscal year to carry out this chapter shall remain available for obligation and expenditure until the end of the fiscal year following the fiscal year for which appropriated. (Pub. L. 91–378, § 6, as added Pub. L. 92–597, Oct. 27, 1972, 86 Stat. 1321, and amended Pub. L. 93–408, Sept. 3, 1974, 88 Stat. 1068.)

AMENDMENTS

1974—Pub. L. 93–408 substituted authorization of appropriation of amount not exceeding $60,000,000 for each fiscal year for authorization of appropriation of amounts not exceeding $30,000,000 for fiscal year ending June 30, 1973 and $60,000,000 for fiscal year ending June 30, 1974.

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TITLE III—EXECUTIVE ORDERS

1. Ex. Order 10584—Rules and Regulations

(See also Ex. Order 10913 under this title)

Ex. Ord. No. 10584, Dec. 18, 1954, 19 F.R. 8725, as amended by Ex. Ord. No. 10913, Jan. 18, 1961, 26 F.R. 510, provided:

SECTION 1. *Scope of order.* This order shall apply (a) to the planning, construction, operation, and maintenance of all works of improvement under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, approved August 4, 1954, as amended; 16 U.S.C. 1001 et seq.) [this chapter], hereinafter referred to as the Act, and (b) to other programs and projects of the Department of Agriculture, and to programs and projects of the Department of the Interior, the Department of the Army, and other Federal agencies to the extent that such programs or projects affect, or are affected significantly by, works of improvement provided for in the Act.

SEC. 2. *General administration.* The Secretary of Agriculture shall have the following-described responsibilities under the Act:

(a) Approval or disapproval of applications for Federal assistance in preparing plans for works of improvement, and the assignment of priorities for the provision of such assistance.

(b) Establishing criteria for the formulation and justification of plans for works of improvement and criteria for the sharing of the cost of both structural and land-treatment measures which conform with the provisions of the Act and with policies established by or at the direction of the President for watershed protection, flood prevention, irrigation, drainage, water supply, and related water-resources development purposes.

(c) Establishing engineering and economic standards and objectives, including standards as to degrees of flood protection, for works of improvement planned and carried out under the authority of the Act.

(d) Determination and definition of (1) those land-treatment measures and structural improvements for flood prevention and measures for the agricultural phases of conservation, development, use and disposal of water or for fish and wildlife development which are eligible for assistance under the Act, and (2) the nature and extent of such assistance and the conditions under which such assistance shall be rendered.

(e) Planning and installing works of improvement on lands under his jurisdiction, and arranging for the participation of other Federal agencies in the planning and installation of works of improvement on lands under their jurisdiction. Recommendations of the heads of other Federal agencies for necessary works of improvement on lands under their jurisdiction shall be submitted as an integral part of the plans of the Department of Agriculture for works of improvement. Arrangements for construction, operation, and maintenance of works of improvement on such lands shall be mutually satisfactory to the Secretary of Agriculture and the head of the Federal agency concerned.

(f) Submitting plans for works of improvement to the State Governor or Governors concerned and to the Federal agencies concerned for review and comment when the Secretary and the interested local organization have agreed on such plans; and, when and as required by the Act, submitting such plans to the Secretary of the Interior and the Secretary of the Army for their review and comment prior to transmission of the plans to the Congress through the President.

(g) Giving full consideration to the recommendations concerning the conservation and development of fish and wildlife resources contained in any report of the Secretary of the Interior which is submitted to him, in accordance with section 12 of the Act [section 1008 of this title] and section 5 of this order, prior to the time he and the local organization have agreed on a plan for works of improvement, and including in the plan such works of improvement for fish and wildlife purposes recommended in the report as are acceptable to him and the local organization.

(h) Holding public hearings at suitable times and places when he determines that such action will further the purposes of the Act.

SEC. 3. *Notification.* (a) The Secretary of Agriculture shall:

(1) Notify in writing the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

(2) Notify the following, severally, in writing of all approvals or disapprovals of applications for planning assistance: the sponsoring organization, the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned.

(b) The Secretary of the Interior shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

(c) The Secretary of the Army shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Interior, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

SEC. 4. *Coordination.* In order to assure the coordination of work authorized under the Act and the related work of other agencies, so that the proper use, conservation, and development of water and related land resources through Federal programs and financial assistance may be achieved in the most orderly, economical, and effective manner.

(a) The Secretary of Agriculture, before authorizing planning assistance in response to an application from a local organization for assistance under the Act, shall:

(1) When an application applies to a watershed located in one of the seventeen western reclamation States or Hawaii and it appears that a major objective is the agricultural phases of the conservation, development, utilization, and disposal of water for irrigation purposes, request the views of the Secretary of the Interior concerning the feasibility of achieving equivalent irrigation benefits by means of works of improvement constructed pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts amendatory or supplementary there-

to, or by means of assistance furnished pursuant to the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a—422k), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

(2) When it appears that a major objective of an application is the reduction of flood damages in urban areas (as defined in the most recent census), request the views of the Secretary of the Army concerning the feasibility of achieving equivalent urban flood protection benefits my means of works of improvement constructed pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), or acts amendatory or supplementary thereto, and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

(3) When an application applies to a watershed located in the Tennessee River drainage basin, request the views of the Board of Directors of the Tennessee Valley Authority concerning the feasibility of achieving the objectives of the application by means of works of improvement for flood control or watershed protection constructed under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving such objectives; and when such planning assistance is authorized, consult with the Tennessee Valley Authority throughout all phases of project development concerning the relationship of works of improvement under the Act to the unified development and regulation of the Tennessee River system.

(b) The Secretary of the Interior shall, prior to undertaking any survey or field investigation under the Reclamation Act of June 17, 1902 (43 U.S.C. 391) [section 391 of Title 43, Public Lands], and acts amendatory or supplementary thereto, or prior to initiating investigations after receipt of a Notice of Intent to apply for a loan under the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a—422k), relating to works of improvements wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such a survey or field investigation or approve such application for assistance only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

(c) The Secretary of the Army shall, prior to undertaking any survey or field investigation pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), and acts amendatory or supplementary thereto, relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such survey or field investigation only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

(d) The Board of Directors of the Tennessee Valley Authority shall, prior to undertaking any survey or field investigation under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), relating to works of improvement for flood control or watershed protection to be installed wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the works of improvement for flood control or watershed protection by means of works of improvement constructed under the Act, and proceed with such survey or investigation only after carefully considering whether works of improvement under the Tennessee Valley Authority Act would be a more appropriate method of achieving such objectives.

(e) Whenever the foregoing provisions of this section require an agency head to request the views of another agency head, such request shall be effected prior to the making of any commitment to local interests, and local interests shall be informed at the outset of negotiations that any plan resulting therefrom is subject to coordination as required by this section.

(f) When any agency having responsibilities for water resources development is considering the initiation of surveys or field investigations in a watershed or subwatershed area of not more than 250,000 acres and it appears that the purposes to be served by the project under investigation could more advantageously be met by means of the notice required by section 12 of the Act [section statutory authority available to that and other agencies, the appropriate agency head shall consider witn the other agency heads concerned and the cooperating local interests the feasibility of preparing a jointly developed plan for coordinated action under available statutory authority.

SEC. 5. *Fish and wildlife development.* Upon receipt of a combination of works of improvement under the 1008 of this title] and section 3(a)(1) of this order, the Secretary of the Interior, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of fish and wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement which will be acceptable to the local organization and the Secretary of Agriculture.

SEC. 6. *Relationship to comprehensive development.* (a) The Secretary of Agriculture shall submit plans for installation of works of improvement under the Act [this chapter] to the Congress through the President only if the Secretary is satisfied that such works constitute needed and harmonious elements in the comprehensive development of the river subbasin or river basin involved.

(b) Federal agencies having responsibilities for water resource developments shall, in the design and justification of works of improvement, take cognizance of all upstream and downstream works in place and in operation, or soon to be brought into operation. The guiding principle shall be to adjust the nature, capacity, and operating characteristics of works of improvement in a manner that (1) reflects the respective contributions of upstream and downstream works to flood protection and to the conservation, development, use, and disposal of water, and (2) provides the best use and control of water resources at minimum cost. Whenever approximately equivalent benefits can be obtained from alternative works of improvement, or combinations of improvements, with approximately the same cost, the alternative or combination lease costly to the Federal Government shall be given preferential consideration. In case benefits are produced jointly by more than one work of improvement, or in case complementary relationships exist between the projects and plans of the several agencies, the benefits claimed in justification of a system of improvements shall not include any duplication or compounding of benefits.

SEC. 7. *Basic data.* In the utilization of existing basic physical and economic data, and in the acquisition of additional basic data required for planning, design, construction, operation and evaluation of works of improvement authorized under the Act [this chapter], the Department of Agriculture shall be assisted by the principal basic-data collection agencies, including the Geological Survey in the Department of the Interior and the Weather Bureau in the Department of Commerce. The basic-data collection agencies shall assist and cooperate with the Department of Agriculture with respect to the following:

(a) Provision of pertinent information in the preliminary planning of works of improvement.

(b) Collaboration in planning programs of hydrologic-data collection in project areas, in the selection of station sites and installation of equipment for collecting hydro-

logic data, and in the collection of such data.

(c) Collaboration in the analysis and interpretation of hydrologic data collected specifically for projects initiated under the Act [this chapter], and of relevant data which may contribute to an analysis of the effects of such projects.

DWIGHT D. EISENHOWER

2. Executive Order 10654—Delegation of Functions of Fish and Wildlife Conservation

21 Fed. Reg. 511

Ex. Ord. No. 10654, Jan. 20, 1956, 21 F. R. 511, provided:

The functions vested in the President by the third proviso of section 5 of the Watershed Protection and Flood Prevention Act (68 Stat. 667 [this section]), relating to the transmittal to the Congress of copies of plans for certain works of improvement and the justifications therefor, are hereby delegated to the Director of the Bureau of the Budget.

DWIGHT D. EISENHOWER

OFFICE OF MANAGEMENT AND BUDGET

The Bureau of the Budget, referred to in Ex. Ord. No. 10654, was designated as the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Records, property, personnel, and funds of the Bureau of the Budget were transferred to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

3. Executive Order 10779—Directing Federal Agencies to Cooperate with State and Local Authorities in Preventing Pollution of the Atmosphere

23 Fed. Reg. 6487

By virtue of the authority vested in me as President of the United States, and in furtherance of the policy expressed in section 1 of the act of July 14, 1955, 69 Stat. 322, of preserving and protecting the primary responsibilities and rights of the States and local governments in controlling air pollution, it is ordered as follows:

The heads of the departments, agencies, and independent establishments of the executive branch of the Government shall take such action as may be practicable and consistent with law, in cooperation with State and local authorities concerned with the control of air pollution, to insure the prevention or abatement of atmospheric pollution caused by or resulting from Federal activities, including industrial and manufacturing processes operated or controlled by the Federal Government and the destruction of foodstuffs or other materials by order, or under the supervision, of Federal regulatory authorities, in a manner consistent, so far as feasible, with programs authorized under State or local law pertaining to the preservation of the cleanliness of the atmosphere and applicable to the agencies of governmental bodies creating such law and to the public generally.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
August 20, 1958.

4. Ex. Order 10913—Rules and Regulations Relating to Administration

26 Fed. Reg. 510

SECTION 1. *Scope of order.* This order shall apply (a) to the planning, construction, operation, and maintenance of all works of improvement under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, approved August 4, 1954, as amended; 16 U.S.C. 1001 et seq.) [this chapter], hereinafter referred to as the Act, and (b) to other programs and projects of the Department of Agriculture, and to programs and projects of the Department of the Interior, the Department of the Army, and other Federal agencies to the extent that such programs or projects affect, or are affected significantly by, works of improvement provided for in the Act.

SEC. 2. *General administration.* The Secretary of Agriculture shall have the following-described responsibilities under the Act:

(a) Approval or disapproval of applications for Federal assistance in preparing plans for works of improvement, and the assignment of priorities for the provision of such assistance.

(b) Establishing criteria for the formulation and justification of plans for works of improvement and criteria for the sharing of the cost of both structural and land-treatment measures which conform with the provisions of the Act and with policies established by or at the direction of the President for watershed protection, flood prevention, irrigation, drainage, water supply, and related water-resources development purposes.

(c) Establishing engineering and economic standards and objectives, including standards as to degrees of flood protection, for works of improvement planned and carried out under the authority of the Act.

(d) Determination and definition of (1) those land-treatment measures and structural improvements for flood prevention and measures for the agricultural phases of conservation, development, use and disposal of water or for fish and wildlife development which are eligible for assistance under the Act, and (2) the nature and extent of such assistance and the conditions under which such assistance shall be rendered.

(e) Planning and installing works of improvement on lands under his jurisdiction, and arranging for the participation of other Federal agencies in the planning and installation of works of improvement on lands under their jurisdiction. Recommendations of the heads of other Federal agencies for necessary works of improvement on lands under their jurisdiction shall be submitted as an integral part of the plans of the Department of Agriculture for works of improvement. Arrangements for construction, operation, and maintenance of works of improvement on such lands shall be mutually satisfactory to the Secretary of Agriculture and the head of the Federal agency concerned.

(f) Submitting plans for works of improvement to the State Governor or Governors concerned and to the Federal agencies concerned for review and comment when the Secretary and the interested local organization have agreed on such plans; and, when and as required by the Act, submitting such plans to the Secretary of the Interior and the Secretary of the Army for their review and comment prior to transmission of the plans to the Congress through the President.

(g) Giving full consideration to the recommendations concerning the conservation and development of fish and wildlife resources contained in any report of the Secretary of the Interior which is submitted to him, in accordance with section 12 of the Act [section 1008 of this title] and section 5 of this order, prior to the time he and the local organization have agreed on a plan for works of improvement, and including in the plan such works of improvement for fish and wildlife purposes recommended in the report as are acceptable to him and the local organization.

(h) Holding public hearings at suitable times and places when he determines that such action will further the purposes of the Act.

SEC. 3. *Notification.* (a) The Secretary of Agriculture shall:

(1) Notify in writing the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

(2) Notify the following, severally, in writing of all approvals or disapprovals of applications for planning assistance: the sponsoring organization, the State Governor or Governors concerned, the Secretary of the Interior, the Secretary of the Army, and other Federal agencies concerned.

(b) The Secretary of the Interior shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Army, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

(c) The Secretary of the Army shall notify in writing the State Governor or Governors concerned, the Secretary of Agriculture, the Secretary of the Interior, and other Federal agencies concerned of his decision to initiate any survey or field investigation involving water-resources development work, and furnish them with appropriate information regarding the scope, nature, status, and results of such survey or investigation.

SEC. 4. *Coordination.* In order to assure the coordination of work authorized under the Act and the related work of other agencies, so that the proper use, conservation, and development of water and related land resources through Federal programs and financial assistance may be achieved in the most orderly, economical, and effective manner.

(a) The Secretary of Agriculture, before authorizing planning assistance in response to an application from a local organization for assistance under the Act, shall:

(1) When an application applies to a watershed located in one of the seventeen western reclamation States or Hawaii and it appears that a major objective is the agricultural phases of the conservation, development, utilization, and disposal of water for irrigation purposes, request the views of the Secretary of the Interior concerning the feasibility of achieving equivalent irrigation benefits by means of works of improvement constructed pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 391), and acts amendatory or supplementary thereto, or by means of assistance furnished pursuant to the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a—422k), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

(2) When it appears that a major objective of an application is the reduction of flood damages in urban areas (as defined in the most recent census), request the views of the Secretary of the Army concerning the feasibility of achieving equivalent urban flood protection benefits my means of works of improvement constructed pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), or acts amendatory or supplementary thereto, and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving that objective.

(3) When an application applies to a watershed located in the Tennessee River drainage basin, request the views of the Board of Directors of the Tennessee Valley Authority concerning the feasibility of achieving the objectives of the application by means of works of improvement for flood control or watershed protection constructed under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), and authorize planning assistance under the Act only after carefully considering whether works of improvement under the Act would be a more appropriate method of achieving such objectives; and when such planning assistance is authorized, consult with the Tennessee Valley Authority throughout all phases of project development concerning the relationship of works of improvement under the Act to the unified development and regulation of the Tennessee River system.

(b) The Secretary of the Interior shall, prior to undertaking any survey or field investigation under the Reclamation Act of June 17, 1902 (43 U.S.C. 391) [section 391 of Title 43, Public Lands], and acts amendatory or supplementary thereto, or prior to initiating investigations after receipt of a Notice of Intent to apply for a loan under the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a—422k), relating to works of improvements wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such a survey or field investigation or approve such application for assistance only after carefully considering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

(c) The Secretary of the Army shall, prior to undertaking any survey or field investigation pursuant to the Flood Control Act of March 1, 1917 (39 Stat. 948), the Flood Control Act of May 15, 1928 (45 Stat. 534), the Flood Control Act of June 22, 1936 (49 Stat. 1570), and acts amendatory or supplementary thereto, relating to works of improvement wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the project proposal by means of Federal assistance furnished pursuant to the Act, and submit a report on such survey or field investigation only after carefully consid-

ering whether works of improvement under his authorities would be a more appropriate method of achieving such objectives.

(d) The Board of Directors of the Tennessee Valley Authority shall, prior to undertaking any survey or field investigation under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831 et seq.), relating to works of improvement for flood control or watershed protection to be installed wholly within a watershed or subwatershed area of not more than 250,000 acres, request the views of the Secretary of Agriculture concerning the feasibility of achieving the major objectives of the works of improvement for flood control or watershed protection by means of works of improvement constructed under the Act, and proceed with such survey or investigation only after carefully considering whether works of improvement under the Tennessee Valley Authority Act would be a more appropriate method of achieving such objectives.

(e) Whenever the foregoing provisions of this section require an agency head to request the views of another agency head, such request shall be effected prior to the making of any commitment to local interests, and local interests shall be informed at the outset of negotiations that any plan resulting therefrom is subject to coordination as required by this section.

(f) When any agency having responsibilities for water resources development is considering the initiation of surveys or field investigations in a watershed or subwatershed area of not more than 250,000 acres and it appears that the purposes to be served by the project under investigation could more advantageously be met by means of the notice required by section 12 of the Act [section statutory authority available to that and other agencies, the appropriate agency head shall consider witn the other agency heads concerned and the cooperating local interests the feasibility of preparing a jointly developed plan for coordinated action under available statutory authority.

SEC. 5. *Fish and wildlife development.* Upon receipt of a combination of works of improvement under the 1008 of this title] and section 3(a)(1) of this order, the Secretary of the Interior, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of fish and wildlife resources and particlpate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement which will be acceptable to the local organization and the Secretary of Agriculture.

SEC. 6. *Relationship to comprehensive development.* (a) The Secretary of Agriculture shall submit plans for installation of works of improvement under the Act [this chapter] to the Congress through the President only if the Secretary is satisfied that such works constitute needed and harmonious elements in the comprehensive development of the river subbasin or river basin involved.

(b) Federal agencies having responsibilities for water resource developments shall, in the design and justification of works of improvement, take cognizance of all upstream and downstream works in place and in operation, or soon to be brought into operation. The guiding principle shall be to adjust the nature, capacity, and operating characteristics of works of improvement in a manner that (1) reflects the respective contributions of upstream and downstream works to flood protection and to the conservation, development, use, and disposal of water, and (2) provides the best use and control of water resources at minimum cost. Whenever approximately equivalent benefits can be obtained from alternative works of improvement, or combinations of improvements, with approximately the same cost, the alternative or combination lease costly to the Federal Government shall be given preferential consideration. In case benefits are produced jointly by more than one work of improvement, or in case complementary relationships exist between the projects and plans of the several agencies, the benefits claimed in justification of a system of improvements shall not include any duplication or compounding of benefits.

SEC. 7. *Basic data.* In the utilization of existing basic physical and economic data, and in the acquisition of additional basic data required for planning, design, construction, operation and evaluation of works of improvement authorized under the Act [this chapter], the Department of Agriculture shall be assisted by the principal basic-data collection agencies, including the Geological Survey in the Department of the Interior and the Weather Bureau in the Department of Commerce. The basic-data collection agencies shall assist and cooperate with the Department of Agriculture with respect to the following:

(a) Provision of pertinent information in the preliminary planning of works of improvement.

(b) Collaboration in planning programs of hydrologic-data collection in project areas, in the selection of station sites and installation of equipment for collecting hydrologic data, and in the collection of such data.

(c) Collaboration in the analysis and interpretation of hydrologic data collected specifically for projects initiated under the Act [this chapter], and of relevant data which may contribute to an analysis of the effects of such projects.

DWIGHT D. EISENHOWER

5. Ex. Order 11237—Prescribing Regulations for Coordinating Planning and the Acquisition of Land Under the Outdoor Recreation Program, etc.

30 Fed. Reg. 9433

Ex. Ord. No. 11237, July 27, 1965, 30 F.R. 9433, provided:

WHEREAS the Housing and Home Finance Administrator, hereinafter referred to as "the Administrator," is authorized under Title VII of the Housing Act of 1961 (42 U.S.C. 1500—1500e), hereinafter referred to as Title VII, to conduct a program for making grants to States and local public bodies for acquiring lands for recreational and other purposes; and

WHEREAS Title VII provides for consultation by the Administrator with the Secretary of the Interior, hereinafter referred to as "the Secretary," with regard to general policies to be followed in reviewing applications for grants for land acquisitions under the program provided for in Title VII, hereinafter referred to as the open space program, and provides for the furnishing of information by the Secretary on the status of recreational planning for areas to be served by the open space land acquired with grants made by the Administrator; and

WHEREAS the Secretary is authorized under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–4—460*l*–11), hereinafter referred to as "the Conservation Act," to provide financial assistance to States for planning for outdoor recreation purposes and acquiring and developing lands therefor under a program hereinafter referrred to as the outdoor recreation program; and

WHEREAS the Secretary has been given certain responsibilities under the Act of May 28, 1963 (16 U.S.C. 460*l*—460*l*–3) and Executive Order No. 11017, for promoting the coordination of Federal plans and activities generally relating to outdoor recreation; and

WHEREAS the programs authorized by Title VII and the Conservation Act can be of special help in creating areas of recreation and beauty for the citizens of our urban areas; and

WHEREAS priority is being given to the needs of our growing urban population by the Secretary in the administration of programs under the Conservation Act; and

WHEREAS the primary purpose of the open space program is to help acquire and preserve open space land which is essential to the proper long-range development and welfare of the Nation's urban areas, in accordance with plans for the allocation of such land for open space purposes; and

WHEREAS, to assure the most economic and efficient utilization of Title VII and the Conservation Act and funds provided in connection therewith, it is necessary to provide standards for the guidance of the Administrator and the Secretary in the administration of these programs as they relate to the acquisition of land for recreational purposes:

NOW, THEREFORE, by virtue of the authority vested in me by Section 5(g) of the Conservation Act (16 U.S.C. 460*l*-8(g)), and as President of the United States, it is hereby ordered as follows:

SECTION 1. *Urbanized areas.* As used in this Order, "urbanized area" means an area which is an urbanized area according to the most recent decennial census together with such additional adjacent areas as the Secretary and the Administrator jointly determine to be appropriate for the accomplishment of the purposes of Title VII and the Conservation Act in a manner consistent with comprehensive planning for orderly metropolitan development.

SEC. 2. *Areas of program concern.* In the acquisition of land for recreation resources the respective responsibilities of the Administrator and the Secretary shall be as follows:

(1) *Open space program.* With respect to the provision of open space land for recreational purposes, the Administrator, through the open space program, shall have responsibility primarily for assisting in the acquisition of lands or interests therein of utility primarily to the urbanized area in which they are located, such as squares, malls, and playgrounds, and parks, recreation areas, historic sites, and open spaces for scenic purposes.

(2) *Land and water conservation fund program.* In addition to responsibilities with respect to outdoor recreation resources of statewide and nationwide utility, the Secretary, through the Conservation Act program, shall have responsibility primarily for assisting in the acquisition of lands for larger regional parks, historic sites, and recreational and scenic areas to serve residents of urban and other local areas.

SEC. 3. *Land and water conservation fund grants in urbanized areas and other urban places.* Grants made by the Secretary for the acquisition of land in urbanized areas and other urban places for outdoor recreation under the Conservation Act shall be for projects which:

(1) are consistent with the comprehensive statewide outdoor recreation plan for the State or States in which the project is to be located: *Provided,* That the portions of such plan relating to urbanized areas shall have been reviewed by the Administrator as to their consistency with comprehensive planning for such areas;

(2) when located in whole or in part in urbanized areas, meet the same requirements with respect to planning and programming as shall have been prescribed by the Administrator with respect to projects under Title VII; and

(3) when located in urban places according to the most recent decennial census (other than those included in urbanized areas), reflect consideration of comprehensive urban planning being carried on for such urban places.

SEC. 4. *Open space grants outside of urbanized areas.* Grants made by the Administrator for acquisition of land or interests therein for recreational purposes under Title VII in areas outside of urbanized areas shall be for projects which:

(1) are consistent with planning and programming required under Title VII: *Provided,* That relevant aspects of such planning and programming shall have been reviewed by the Secretary as to their consistency, insofar as they are related to the achievement of recreational objectives, with the comprehensive statewide outdoor recreation plan; and

(2) meet the same requirements with respect to planning and programming as shall have been prescribed by the Secretary with respect to projects under the Conservation Act.

SEC. 5. *Review.* (a) The Administrator, in reviewing plans under Section 3 of this Order, shall transmit his comments to the Secretary within thirty days, or such other period as may be agreed upon, after receipt of such plans. The Secretary shall take such comments into consideration before approving such plans and programs. If the Secretary disagrees with a recommendation of the Administrator, he shall so notify the Administrator and provide him, in writing, with his reasons therefor.

(b) The Secretary, in reviewing plans and programs under Section 4 of this Order, shall transmit his comments to the Administrator within thirty days, or such other period as may be agreed upon, after receipt of such plans and programs. The Administrator shall take such comments into consideration before approving grants for acquisition. If the Administrator disagrees with a recommendation of the Secretary, he shall so notify the Secretary and provide him, in writing, with his reasons therefor.

SEC. 6. *Coordinated procedures.* (a) The Secretary and the Administrator shall jointly develop procedures consistent with the purposes and requirements of the Conservation Act and Title VII, to carry out the provisions of this Order, including procedures for:

(1) evaluating applications for assistance in acquiring land for predominantly recreational purposes under outdoor recreation and open space programs;

(2) consultation and exchange of information concerning applications for, and grants of, assistance for acquisition of land for predominantly recreational purposes in urbanized areas under the outdoor recreation program and outside of urbanized areas under the open space program; and

(3) joint and mutual determinations for making grants of assistance under either the outdoor recreation program or the open space program in cases in which unusual circumstances would make departures from the preceding provisions of this Order desirable for reasons of economy, efficiency, or equity.

(b) Whenever the Secretary and the Administrator make a joint determination pursuant to paragraph (a)(3) of this Section, assistance may be provided in accordance with such determination.

LYNDON B. JOHNSON.

6. Ex. Order No. 11239—Enforcement of Convention for Safety of Life at Sea, 1960

30 Fed. Reg. 9671

Ex. Ord. No. 11239, July 31, 1965, 30 F.R. 9671, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 38 F.R. 16247 provided:

WHEREAS under Article I of the International Convention for Safety of Life at Sea, signed at London on June 17, 1960, ratified by the United States of America, and proclaimed by the President on March 24, 1965 (TIAS 5780), hereinafter sometimes referred to as the Convention, the Government of the United States of America, together with the governments of the other countries which have become parties to the Convention, undertakes to give effect to the provisions of the Convention and of the Regulations annexed thereto, to promulgate all laws, decrees, orders, and regulations, and to take all other steps which may be necessary to give the Convention full and complete effect, so as to insure that, from the point of view of safety of life, a ship is fit for the service for which it is intended; and

WHEREAS it is expedient and necessary, in order that the Government of the United States of America may give full and complete effect to the Convention, that several departments and agencies of the Executive Branch of the Government perform functions and duties thereunder; and

WHEREAS, in accordance with Article XI thereof, the Convention came into force on May 26, 1965:

NOW, THEREFORE, by virtue of the authority vested in me by Section 301 of Title 3 of the United States Code and as President of the United States of America, it is ordered as follows:

SECTION 1. The Secretary of State, the Secretary of Transportation (acting through the Coast Guard), the Secretary of Commerce (acting through the Weather Bureau), and the Federal Communications Commission, respectively, are hereby directed, in relation to the fulfillment of the obligations undertaken by the Government of the United States of America under the Convention, to perform the functions and duties therein prescribed and undertaken which appertain to the functions and duties which they severally are now authorized or directed by law to perform. Each of the Secretaries and the Commission shall cooperate and assist the others in carrying out the duties imposed by the Convention and by this order.

SEC. 2. The Secretary of Transportation (acting through the Coast Guard), or such other agency as may be authorized by law so to do, shall issue certificates as required by the Convention, and in any case in which a certificate is to include matter which appertains to the functions and duties directed or authorized by law to be performed by the head of any department or agency other than the head of the issuing agency, the head of the issuing agency shall first ascertain from the head of the other department or agency his decision with respect to such matter, and such decision shall be final and binding.

SEC. 3. In the performance of functions and duties described in Sections 1 and 2 of this order, the Secretary of Transportation (acting through the Coast Guard) may avail himself of the services of the American Bureau of Shipping so long as that Bureau is operated in compliance with Section 25 of the Act of June 5, 1920, as amended (46 U.S.C. 881), and may make all necessary provisions for the performance by the Bureau of specified duties undertaken under the Convention and to permit the Bureau to issue cargo ship safety construction certificates to those cargo vessels found to be in compliance with the Convention, which are classed by the Bureau. The Secretary of Transportation (acting through the Coast Guard) shall establish all necessary regulations required to carry out in the most effective manner the provisions of the Convention.

SEC. 4. Whenever the Coast Guard operates as a service in the Navy, the functions to be performed by the Secretary of Transportation (acting through the Coast Guard) under this order shall vest in and be performed by the Secretary of the Navy (acting through the Coast Guard).

SEC. 5. (a) This order supersedes Executive Order No. 10402 of October 30, 1952, entitled "Enforcement of the Convention for Safety of Life at Sea, 1948," to the extent that the International Convention for Safety of Life at Sea signed at London on June 17, 1960, replaces and abrogates the International Convention for Safety of Life at Sea signed at London on June 10, 1948.

(b) Executive Order No. 7548 of February 5, 1937, entitled "Enforcement of the Convention for Safety of Life at Sea, 1929," is hereby revoked.

LYNDON B. JOHNSON.

PROC. NO. 3632. ENABLING PROCLAMATION

Proc. No. 3632, Dec. 29, 1964, 29 F.R. 19167, provided:

WHEREAS certain regulations designated as Regulations for Preventing Collisions at Sea, 1960, were approved by the International Conference on Safety of Life at Sea, 1960, held at London from May 17 to June 17, 1960; and

WHEREAS the Act of September 24, 1963 (Public Law 88–131, 77 Stat. 194) [this chapter], hereinafter referred to as the Act, authorizes the President of the United States of America to proclaim those regulations, which are set forth in Section 4 of the Act [sections 1053, 1061—1094 of this title], and to specify the effective date thereof, the regulations to have effect (after the effective date thus specified), as if enacted by statute; and

WHEREAS on March 12, 1964, the Government of the United States of America communicated to the Inter-Governmental Maritime Consultative Organization, as depository agency, its acceptance of the regulations; and

WHEREAS the Government of the United States of America has been notified by the Inter-Governmental Maritime Consultative Organization, as depository agency, that substantial unanimity has been reached as to the acceptance by interested countries, and that it has fixed September 1, 1965, as the date on and after which the regulations shall be applied by the governments which have accepted them; and

WHEREAS the Act [this chapter] provides that the Regulations for Preventing Collisions at Sea, 1948 (65 Stat. 406), as proclaimed and made effective as of January 1, 1954, by Proclamation No. 3030 of August 15, 1953, shall be of no further force or effect after the effective date proclaimed for the Regulations for Preventing Collisions at Sea, 1960.

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, under and by virtue of the authority vested in me by the Act, do hereby proclaim the Regulations for Preventing Collisions at Sea, 1960, as set forth in Section 4 of the Act [sections 1053, 1061—1094 of this title], which regulations are attached hereto and made a part hereof, and do hereby specify that the effective date thereof shall be September 1, 1965.

Proclamation No. 3030 is superseded effective as of September 1, 1965.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-ninth day of December in the year of our Lord nineteen [SEAL] hundred and sixty-four, and of the Independence of the United States of America the one hundred and eighty-ninth.

LYNDON B. JOHNSON

7. Executive Order 11467—Delegation of Authority, North Pacific Fisheries Act

34 Fed. Reg. 7271

Ex. Ord. No. 11467, May 1, 1969, 34 F.R. 7271, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code [section 301 of title 3, The President] and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of State is hereby designated and empowered to perform the following-described functions without the approval, ratification, or other action of the President:

(1) The authority vested in the President by section 6(a) of the North Pacific Fisheries Act of 1954 (68 Stat. 699; 16 U.S.C. 1025(a)) [subsec. (a) of this section] to accept or reject, on behalf of the United States, recommendations made by the International North Pacific Fisheries Commission in accordance with the provisions of Article III, section 1, of the International Convention for the High Seas Fisheries of the North Pacific Ocean (signed at Tokyo May 9, 1952, TIAS 2786) and recommendations

made by the Commission in pursuance of the provisions of the Protocol to that Convention.

(2) The authority vested in the President by Article III, paragraph 2, of the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, March 2, 1953, TIAS 2900) to approve or reject actions of the International Pacific Halibut Commission taken pursuant to that paragraph.

SEC. 2. In carrying out his authority under section 1 of this order the Secretary of State shall consult with the Secretary of the Interior.

RICHARD NIXON.

8. Executive Order 11472—Cabinet Committee on the Environment

34 Fed. Reg. 8693

Ex. Ord. No. 11472, May 29, 1969, 34 F.R. 8693, as amended by Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

PART I. CABINET COMMITTEE ON THE ENVIRONMENT

Section 101. Establishment of the Cabinet Committee. (a) There is hereby established the Cabinet Committee on the Environment (hereinafter referred to as "the Cabinet Committee").

(b) The President of the United States shall preside over meetings of the Cabinet Committee. The Vice President shall preside in the absence of the President.

(c) The Cabinet Committee shall be composed of the following members:

The Vice President of the United States
Secretary of Agriculture
Secretary of Commerce
Secretary of Health, Education and Welfare
Secretary of Housing and Urban Development
Secretary of the Interior
Secretary of Transportation

and such othe heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Cabinet Committee may designate an alternate, who shall serve as a member of the Cabinet Committee whenever the regular member is unable to attend any meeting of the Cabinet Committee.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Cabinet Committee are to be considered by the Cabinet Committee, the President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Cabinet Committee.

(f) The Director of the Bureau of the Budget [now the Director of the Office of Management and Budget], the Director of the Office of Science and Technology, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Cabinet Committee on the Environment as observers.

(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.

Sec. 102. Functions of the Cabinet Committee. (a) The Cabinet Committee shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Cabinet Committee is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects that endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Cabinet Committee shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Cabinet Committee may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Cabinet Committee shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

Sec. 103. Coordination. The Secretary of the Interior may make available to the Cabinet Committee for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49 [section 460*l* et seq. of this title], to the extent permitted by law, he may make such authorities and resources available to the Cabinet Committee also for promoting such coordination of other matters assigned to the Cabinet Committee by this order.

Sec. 104. Assistance for the Cabinet Committee. In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall provide or arrange for necessary administrative and staff services, support, and facilities for the Cabinet Committee, and (2) each department and agency which has membership on the Cabinet Committee under Section 101(c) hereof shall furnish the Cabinet Committee such information and other assistance as may be available.

PART II. CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

Sec. 201. Establishment of the Committee. There is hereby established the Citizens' Advisory Committee on Environmental Quality (hereinafter referred to as the

"Citizens' Committee"). The Citizens' Committee shall be composed of a chairman and not more than 14 other members appointed by the President. Appointments to membership on the Citizens' Committee shall be for staggered terms, except that the chairman of the Citizens' Committee shall serve until his successor is appointed.

Sec. 202. Functions of the Citizens' Committee. The Citizens' Committee shall advise the President and the Cabinet Committee on matters assigned to the Cabinet Committee by the provisions of this order.

Sec. 203. Expenses. Members of the Citizens' Committee shall receive no compensation from the United States by reason of their services under this order but shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701–5708) [sections 5701–5708 of Title 5, Government Organization and Employees] for persons in the Government service employed intermittently.

Sec. 204. Continuity. Persons who on the date of this order are members of the Citizens' Advisory Committee on Recreation and Natural Beauty established by Executive Order No. 11278 of May 4, 1966, as amended, shall, until the expirations of their respective terms and without further action by the President, be members of the Citizens' Committee established by the provisions of this Part in lieu of an equal number of the members provided for in section 201 of this order.

PART III. GENERAL PROVISIONS

Sec. 301. Construction. Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any such function in any manner.

Sec. 302. Prior bodies and orders. The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

(1) Executive Order No. 11278 of May 4, 1966.

(2) Executive Order No. 11359A of June 29, 1967.

(3) Executive Order No. 11402 of March 29, 1968.

RICHARD NIXON

9. Executive Order 11507—Prevention, Control, and Abatement of Air and Water Pollution at Federal Facilities

35 Fed. Reg. 2573

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Clean Air Act, as amended (42 U.S.C. 1857), the Federal Water Pollution Control Act, as amended (33 U.S.C. 466), and the National Environmental Policy Act of 1969 (Public Law No. 91–190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Policy.* It is the intent of this order that the Federal Government in the design, operation, and maintenance of its facilities shall provide leadership in the nationwide effort to protect and enhance the quality of our air and water resources.

SEC. 2. *Definitions.* As used in this order:

(a) The term "respective Secretary" shall mean the Secretary of Health, Education, and Welfare in matters pertaining to air pollution control and the Secretary of the Interior in matters pertaining to water pollution control.

(b) The term "agencies" shall mean the departments, agencies, and establishments of the executive branch.

(c) The term "facilities" shall mean the buildings, installations, structures, public works, equipment, aircraft, vessels, and other vehicles and property, owned by or constructed or manufactured for the purpose of leasing to the Federal Government.

(d) The term "air and water quality standards" shall mean respectively the quality standards and related plans of implementation, including emission standards, adopted pursuant to the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended, or as prescribed pursuant to section 4(b) of this order.

(e) The term "performance specifications" shall mean permissible limits of emissions, discharges, or other values applicable to a particular Federal facility that would, as a minimum, provide for conformance with air and water quality standards as defined herein.

(f) The term "United States" shall mean the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

SEC. 3. *Responsibilities.* (a) Heads of agencies shall, with regard to all facilities under their jurisdiction:

(1) Maintain review and surveillance to ensure that the standards set forth in section 4 of this order are met on a continuing basis.

(2) Direct particular attention to identifying potential air and water quality problems associated with the use and production of new materials and make provisions for their prevention and control.

(3) Consult with the respective Secretary concerning the best techniques and methods available for the protection and enhancement of air and water quality.

(4) Develop and publish procedures, within six months of the date of this order, to ensure that the facilities under their jurisdiction are in conformity with this order. In the preparation of such procedures there shall be timely and appropriate consultation with the respective Secretary.

(b) The respective Secretary shall provide leadership in implementing this order, including the provision of technical advice and assistance to the heads of agencies in connection with their duties and responsibilities under this order.

(c) The Council on Environmental Quality shall maintain continuing review of the implementation of this order and shall, from time to time, report to the President thereon.

SEC. 4. *Standards.* (a) Heads of agencies shall ensure that all facilities under their jurisdiction are designed, operated, and maintained so as to meet the following requirements:

(1) Facilities shall conform to air and water quality standards as defined in section 2(d) of this order. In those cases where no such air or water quality standards are in force for a particular geographical area, Federal facilities in that area shall conform to the standards established pursuant to subsection (b) of this section. Federal facilities shall also conform to the performance specifications provided for in this order.

(2) Actions shall be taken to avoid or minimize wastes created through the complete cycle of operations of each facility.

(3) The use of municipal or regional waste collection or disposal systems shall be the preferred method of disposal of wastes from Federal facilities. Whenever use of such a system is not feasible or appropriate, the heads of agencies concerned shall take necessary measures for the satisfactory disposal of such wastes, including:

(A) When appropriate, the installation and operation of their own waste treatment and disposal facilities in a manner consistent with this section.

(B) The provision of trained manpower, laboratory and other supporting facilities as appropriate to meet the

requirements of this section.

(C) The establishment of requirements that operators of Federal pollution control facilities meet levels of proficiency consistent with the operator certification requirements of the State in which the facility is located. In the absence of such State requirements the respective Secretary may issue guidelines, pertaining to operator qualifications and performance, for the use of heads of agencies.

(4) The use, storage, and handling of all materials, including but not limited to, solid fuels, ashes, petroleum products, and other chemical and biological agents, shall be carried out so as to avoid or minimize the possibilities for water and air pollution. When appropriate, preventive measure shall be taken to entrap spillage or discharge or otherwise to prevent accidental pollution. Each agency, in consultation with the respective Secretary, shall establish appropriate emergency plans and procedures for dealing with accidental pollution.

(5) No waste shall be disposed of or discharged in such a manner as could result in the pollution of ground water which would endanger the health or welfare of the public.

(6) Discharges of radioactivity shall be in accordance with the applicable rules, regulations, or requirements of the Atomic Energy Commission and with the policies and guidance of the Federal Radiation Council as published in the FEDERAL REGISTER.

(b) In those cases where there are no air or water quality standards as defined in section 2(d) of this order in force for a particular geographic area or in those cases where more stringent requirements are deemed advisable for Federal facilities, the respective Secretary, in consultation with appropriate Federal, State, interstate, and local agencies, may issue regulations establishing air or water quality standards for the purpose of this order, including related schedules for implementation.

(c) The heads of agencies, in consultation with the respective Secretary, may from time to time identity facilities or uses thereof which are to be exempted, including temporary relief from provisions of this order in the interest of national security or in extraordinary cases where it is in the national interest. Such exemptions shall be reviewed periodically by the respective Secretary and the heads of the agencies concerned. A report on exemptions granted shall be submitted to the Council on Environmental Quality periodically.

SEC. 5. *Procedures for abatement of air and water pollution at existing Federal facilities.* (a) Actions necessary to meet the requirements of subsections (a)(1) and (b) of section 4 of this order pertaining to air and water pollution at existing facilities are to be completed or under way no later than December 31, 1972. In cases where an enforcement conference called pursuant to law or air and water quality standards require earlier actions, the earlier date shall be applicable.

(b) In order to ensure full compliance with the requirements of section 5(a) and to facilitate budgeting for necessary corrective and preventive measures, heads of agencies shall present to the Director of the Bureau of the Budget [now the Director of the Office of Management and Budget] by June 30, 1970, a plan to provide for such improvements as may be necessary to meet the required date. Subsequent revisions needed to keep any such plan up-to-date shall be promptly submitted to the Director of the Bureau of the Budget [now the Director of the Office of Management and Budget].

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility to meet the requirements of subsections 4 (a)(1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements, he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) As may be found necessary, heads of agencies may submit requests to the Director of the Bureau of the Budget [now the Director of the Office of Management and Budget] for extensions of time for a project beyond the time specified in section 5(a). The Director, in consultation with the respective Secretary, may approve such requests if the Director deems that such project is not technically feasible or immediately necessary to meet the requirements of subsections 4 (a) and (b). Full justification as to the extraordinary circumstances necessitating any such extension shall be required.

(e) Heads of agencies shall not use for any other purpose any of the amounts appropriated and apportioned for corrective and preventive measures necessary to meet the requirements of subsection (a) for the fiscal year ending June 30, 1971, and for any subsequent fiscal year.

SEC. 6. *Procedures for new Federal facilities.* (a) Heads of agencies shall ensure that the requirements of section 4 of this order are considered at the earliest possible stage of planning for new facilities.

(b) A request for funds to defray the cost of designing and constructing new facilities in the United States shall be included in the annual budget estimates of an agency only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility will meet the requirement of section 4 of this order.

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility when action is necessary to meet the requirements of subsections 4 (a)(1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) Heads of agencies shall give due consideration to the quality of air and water resources when facilities are constructed or operated outside the United States.

SEC. 7. *Procedures for Federal Water Resources Projects.* (a) All water resources projects of the Departments of Agriculture, the Interior, and the Army, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission shall be consistent with the requirements of section 4 of this order. In addition, all such projects shall be presented for the consideration of the Secretary of the Interior at the earlies feasible stage if they involve proposals or recommendations with respect to the authorization or construction of any Federal water resources project in the United States. The Secretary of the Interior shall review plans and supporting data for all such projects relating to water quality, and shall prepare a report to the head of the responsible agency describing the potential impact of the project on water quality, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary in connection with the design, construction, and operation of the project.

(b) The report of the Secretary of the Interior shall accompany at the earliest practicable stage any report proposing authorization or construction, or a request for funding, of such a water resource project. In any case in which the Secretary of the Interior fails to submit a report within 90 days after receipt of project plans, the head of the agency concerned may propose authorization, construction, or funding of the project without such an accompanying report. In such a case, the head of the agency concerned shall explicitly state in his request or report concerning the project that the Secretary of the Interior has not reported on the potential impact of the project on water quality.

SEC. 8. *Saving provisions.* Except to the extent that they are inconsistent with this order, all outstanding rules, regulations, order, delegations, or other forms of administrative action issued, made, or otherwise taken under the orders superseded by section 9 hereof or relating to the subject of this order shall remain in full force and effect until amended, modified, or terminated by proper authority.

SEC. 9. *Orders superseded.* Executive Order No. 11282 of May 26, 1966, and Executive Order No. 11288 of July 2, 1966, are hereby superseded.

RICHARD NIXON

10. Executive Order 11514—Protection and Enhancement of Environmental Quality

35 Fed. Reg. 4247

Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91–190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969 [sections 4331–4335 of this Title], hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act [section 4332 of this title].

SEC. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international coöperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act [section 4332 (2)(C) of this title].

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act [section 4341 of this title].

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

SEC. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", whereever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget,", the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91–190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee."

(5) By deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91–190) [this chapter]".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

RICHARD NIXON

11. Executive Order 11523—Establishing the National Industrial Pollution Control Council

35 Fed. Reg. 5993

Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law 91–190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Establishment of the Council.* (a) There is hereby established the National Industrial Pollution Control Council (hereinafter referred to as "the Industrial Council") which shall be composed of a Chairman, a Vice-chairman, and other representatives of business and industry appointed by the Secretary of Commerce (hereinafter referred to as "the Secretary").

(b) The Secretary, with the concurrence of the Chairman, shall appoint an Executive Director of the Industrial Council.

SEC. 2. *Functions of the Industrial Council.* The Industrial Council shall advise the President and the Chairman of the Council on Environmental Quality, through the Secretary, on programs of industry relating to the quality of the environment. In particular, the Industrial Council may—

(1) Survey and evaluate the plans and actions of industry in the field of environmental quality.

(2) Identify and examine problems of the effects on the environment of industrial practices and the needs of industry for improvements in the quality of the environment, and recommend solutions to those problems.

(3) Provide liaison among members of the business and industrial community on environmental quality matters.

(4) Encourage the business and industrial community to improve the quality of the environment.

(5) Advise on plans and actions of Federal, State, and local agencies involving environmental quality policies affecting industry which are referred to it by the Secretary, or by the Chairman of the Council on Environmental Quality through the Secretary.

SEC. 3 *Subordinate Committees.* The Industrial Council may establish, with the concurrence of the Secretary, such subordinate committees as it may deem appropriate to assist in the performance of its functions. Each subordinate committee shall be headed by a chairman appointed by the Chairman of the Industrial Council with the concurrence of the Secretary.

SEC. 4. *Assistance for the Industrial Council.* In compliance with applicable law, and as necessary to serve the purposes of this order, the Secretary shall provide or arrange for administrative and staff services, support, and facilities for the Industrial Council and any of its subordinate committees.

SEC. 5. *Expenses.* Members of the Industrial Council or any of its subordinate committees shall receive no compensation from the United States by reason of their services hereunder, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

SEC. 6. *Regulations.* The provisions of Executive Order No. 11007 of February 26, 1962 (3 CFR 573) [set out as a note under section 901 of Title 5] prescribing regulations for the formation and use of advisory committees, are hereby made applicable to the Industrial Council and each of its subordinate committees. The Secretary may exercise the discretionary powers set forth in that order.

SEC. 7. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency to the authority of any other Federal agency or of the Industrial Council or of any of its subordinate committees, or as abrogating or restricting any such function in any manner.

RICHARD NIXON

12. Executive Order 11574—Administration of Permit Program (Water Pollution)

35 Fed. Reg. 19627

Ex. Ord. No. 11574, Dec. 23, 1970, 35 F.R. 19627, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purposes and policies of section 13 of the Act of March 3, 1899, c. 425, 30 Stat. 1152 (33 U.S.C. 407), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et. (16 U.S.C. 661–66c), and the National Environmental Policy Act, of 1969 (42 U.S.C. 4321–4347), it is hereby ordered as follows:

SECTION 1. *Refuse Act permit program.* The executive branch of the Federal Government shall implement a permit program under the aforesaid section 13 of the Act of March 3, 1899 (hereinafter referred to as "the Act") to regulate the discharge of pollutants and other refuse matter into the navigable waters of the United States or their tributaries and the placing of such matter upon their banks.

SEC. 2. *Responsibilities of Federal agencies.* (a)(1) The Secretary shall, after consultation with the Administrator respecting water quality matters, issue and amend, as appropriate, regulations, procedures, and instructions for receiving, processing, and evaluating applications for permits pursuant to the authority of the Act.

(2) The Secretary shall be responsible for granting, denying, conditioning, revoking, or suspending Refuse Act permits. In so doing:

(A) He shall accept findings, determinations, and interpretations which the Administrator shall make respecting applicable water quality standards and compliance with those standards in particular circumstances, including findings, determinations, and interpretations arising from the Administrator's review of State or interstate agency water quality certifications under section 21(b) of the Federal Water Pollution Control Act (84 Stat. 108) [section 1171(b) of this title]. A permit shall be denied where the certification prescribed by section 21(b) of the Federal Water Pollution Control Act [section 1171(b) of this title] has been denied, or where issuance would be inconsistent with any finding, determination, or interpretation of the Administrator pertaining to applicable water quality standards and considerations.

(B) In addition, he shall consider factors, other than water quality, which are prescribed by or may be lawfully considered under the Act or other pertinent laws.

(3) The Secretary shall consult with the Secretary of the Interior, with the Secretary of Commerce, with the Administrator, and with the head of the agency exercising administration over the wildlife resources of any affected State, regarding effects on fish and wildlife which are not reflected in water quality considerations, where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made.

(4) Where appropriate for a particular permit application, the Secretary shall perform such consultations respecting environmental amenities and values, other

than those specifically referred to in paragraphs (2) and (3) above, as may be required by the National Environmental Policy Act of 1969 [section 4321 et seq. of title 42].

(b) The Attorney General shall conduct the legal proceedings necessary to enforce the Act and permits issued pursuant to it.

SEC. 3. *Coordination by Council on Environmental Quality.* (a) The Council on Environmental Quality shall coordinate the regulations, policies, and procedures of Federal agencies with respect to the Refuse Act permit program.

(b) The Council on Environmental Quality, after consultation with the Secretary, the Administrator, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, and the Attorney General, shall from time to time or as directed by the President advise the President respecting the implementation of the Refuse Act permit program, including recommendations regarding any measures which should be taken to improve its administration.

SEC. 4. *Definitions.* As used in this order, the word "Secretary" means the Secretary of the Army, and the word "Administrator" means the Administrator of the Environmental Protection Agency.

RICHARD NIXON.

13. Executive Order 11602—Administration of the Clean Air Act, With Respect to Federal Contracts, Grants, or Loans

30 Fed. Reg. 12475

Ex. Ord. No. 11602, June 29, 1971, 36 F.R. 12475, provided:

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), and particularly section 306 of that Act [this section] as added by the Clean Air Amendments of 1970 (Public Law 91–604, approved December 31, 1970), it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act [this chapter] (hereinafter referred to as "the Act").

SEC. 2. *Designation of Facilities.* (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Act [section 1857c–8(c)(1) of this title]. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans.* (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations.* The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Act [this chapter] and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations.* The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance.* The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of his agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Act [this chapter] or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such report to the Administrator.

SEC. 7. *Enforcement.* The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress.* (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who

are not prime contractors, or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions.* The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provision of the Act [this chapter].

SEC. 10. *Applicability.* This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

RICHARD NIXON

14. Executive Order 11643 as Amended by Executive Orders 11870 and 11917—Environmental Safeguards on Activities for Animal Damage Control on Federal Lands

40 Fed. Reg. 30611

Ex. Ord. No. 11870, July 18, 1975, 40 F.R. 30611, as amended by Ex. Ord. No. 11917, May 28, 1976, 41 F.R. 22239, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of purposes and policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the provisions of Section 1 of the Act of March 2, 1931 (46 Stat. 1468, 7 U.S.C. 426) and the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531 *et seq.*), Executive Order No. 11643 of February 8, 1972, is amended to read as follows:

SECTION 1. It is the policy of the Federal Government, consistent with the authorities cited above, to:

(1) Manage the public lands to protect all animal resources thereon in the manner most consistent with the public trust in which such lands are held.

(2) Conduct all mammal or bird damage control programs in a manner which contributes to the maintenance of environmental quality, and to the conservation and protection of the Nation's wildlife resources, including predatory animals.

(3) Restrict the use on public lands and in Federal predator control programs of any chemical toxicant for the purpose of killing predatory animals or birds which would have secondary poisoning effects.

(4) Restrict the use of chemical toxicants for the purpose of killing predatory or other mammals or birds in Federal programs and on Federal lands in a manner which will balance the need for a responsible animal damage control program consistent with the other policies set forth in this Order; and

(5) assure that where chemical toxicants or devices are used pursuant to Section 3(b), only those combinations of toxicants and techniques will be used which best serve human health and safety and which minimize the use of toxicants and best protect nontarget wildlife species and those individual predatory animals and birds which do not cause damage, consistent with the policies of this Order.

SEC. 2. Definitions. As used in this Order the term:

(a) "Federal lands" means all real property owned by or leased to the Federal Government, excluding (1) lands administered by the Secretary of the Interior pursuant to his trust responsibilities for Indian affairs, and (2) real property located in metropolitan areas.

(b) "Agencies" means the departments, agencies and establishments of the Executive branch of the Federal Government.

(c) "Chemical toxicant" means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to or injected into the body, in relatively small amounts, by its chemical action may cause significant bodily malfunction, injury, illness, or death, to animals or to man.

(d) "Predatory mammal or bird" means any mammal or bird which habitually preys upon other animals, birds, reptiles or fish.

(e) "Secondary poisoning effect" means the result attributable to a chemical toxicant which, after being ingested, inhaled, or absorbed, or when applied to or injected into, a mammal, bird, reptile or fish, is retained in its tissue, or otherwise retained in such a manner and quantity that the tissue itself or retaining part if thereafter ingested by man, mammal, bird, reptile or fish, produces the effects set forth in paragraph (c) of this Section.

(f) "Field use" means use on lands not in, or immediately adjacent to occupied buildings.

SEC. 3. Restrictions on Use of Toxicants. (a) Heads of agencies shall take such action as is necessary to prevent on any Federal lands under their jurisdiction, or in any Federal program of mammal or bird damage control under their jurisdiction:

(1) the field use of any chemical toxicant for the purpose of killing a predatory mammal or bird; or

(2) the field use of any chemical toxicant which causes any secondary poisoning effect for the purpose of killing mammals, birds, or reptiles.

(b) Notwithstanding the provisions of subsection (a) of a chemical toxicant for the purpose of killing predathe emergency use on Federal lands under his jurisdiction of a chemical toxicant for the purpose of killing predatory mammals or birds, or of a chemical toxicant which causes a secondary poisoning effect for the purpose of killing other mammals, birds, or reptiles, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture, and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that an emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential:

(1) to the protection of the health or safety of human life;

(2) to the preservation of one or more wildlife species threatened with extinction, or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant natural resources.

(c) Notwithstanding the provisions of subsection (a) of this Section, the head of an agency may authorize the use, on an experimental basis, of sodium cyanide to control coyote and other predatory mammal or bird damage to livestock on Federal lands or in Federal programs, provided that such use is in accordance with all applicable laws and regulations, including those relating to the use of chemical toxicants, and continues for no more than one year.

(d) Notwithstanding the provisions of subsection (a) of this Section, the head of an agency may authorize the operational use of sodium cyanide in Federal programs or on Federal lands, but only in accordance with regulations and on the terms and subject to all the restrictions which may now or hereafter be prescribed by the Environmental Protection Agency; provided that, such use of sodium cyanide is prohibited in (1) areas where endangered or threatened animal species might be adversely affected; (2) areas of the National Park System; (3) areas of the National Wildlife Refuge System; (4) areas of the National Wilderness Preservation System; (5) areas within national forests or other Federal lands specifically set aside for recreational use; (6) prairie dog towns; (7) National Monument areas; and (8) any areas where exposure to the public and family pets is probable.

SEC. 4. Rules for Implementation of Order. Heads of agencies shall issue such rules or regulations as may be necessary and appropriate to carry out the provisions and policy of this Order.

GERALD R. FORD.

15. Executive Order 11644—Use of Off-Road Vehicles on Public Lands

37 Fed. Reg. 2877

Ex. Ord. No. 11644, Feb. 8, 1972, 37 F.R. 2877, provided:

An estimated 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dune-buggies, all-terain vehicles, and others—are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands—often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity—has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

Now, Therefore, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) [this chapter], it is hereby ordered as follows:

Section 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Sec. 2. *Definitions.* As used in this order, the term:

(1) "public lands" means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as "Land Between the Lakes," and (C) lands under the custody and control of the Secretary of Defense;

(2) "respective agency head" means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;

(3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any military, fire, emergency, or law enforcement vehicle when used for emergency purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

(4) "official use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

Sec. 3. *Zones of Use.* (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following—

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

Sec. 4. *Operating Conditions.* Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

Sec. 5. *Public Information.* The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

Sec. 6. *Enforcement.* The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

Sec. 7. *Consultation.* Before issuing the regulations or administrative instructions required by this order or designating areas or trails are required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Atomic Energy Commission.

Sec. 8. *Monitoring of Effects and Review.* (a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designation of areas or other actions taken pursuant to this order as necessary to further the policy of this order.

(b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

Richard Nixon

16. Executive Order 11738—Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans

38 Fed. Reg. 25161

Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, provided:

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91–604), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500), it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (hereinafter referred to as "the Air Act") and the Federal Water Pollution Control Act (hereinafter referred to as "the Water Act").

SEC. 2. *Designation of Facilities.* (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act or section 309(c) of the Water Act. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans.* (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations.* The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations.* The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance.* The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of his agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement.* The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress.* (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contratcors or direct recipients of Federal assistance by way of contacts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions.* The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability.* This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity.* Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971, and section 306 of the Air Act.

SEC. 12. *Order Superseded.* Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON.

17. Executive Order 11911—Preservation of Endangered Species

41 Fed. Reg. 1683

Ex. Ord. No. 11911, Apr. 13, 1976, 41 F.R. 15683, provided:

By virtue of the authority vested in me by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed at Washington, D.C., on March 3, 1973 (Ex. Doc. H (93d Cong., 1st Sess.)), hereinafter referred to as the Convention, Section 8(e) of the Endangered Species Act of 1973 (87 Stat. 893; 16 U.S.C. 1537(c)), and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 981, effective April 30, 1942), and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Secretary of the Interior, in accord with Article IX of the Convention and Section 8(e) of the Endangered Species Act of 1973, is hereby designated the Management Authority for purposes of the Convention, and is authorized to communicate with other Parties to the Convention and with the Secretariat established by the Convention.

SEC. 2. The Management Authority shall consult with appropriate agencies and shall ensure that the performance of its responsibilities, under the Convention and the Endangered Species Act of 1973, is in accord with the performance by other agencies of those functions vested by law in such agencies.

SEC. 3. (a) There is hereby established the Endangered Species Scientific Authority which, in accord with Article IX of the Convention and Section 8(e) of the Endangered Species Act of 1973, is designated the Scientific Authority for purposes of the Convention.

(b) The Endangered Species Scientific Authority shall be composed of scientifically qualified agency representatives. Each of the following shall designate one such representative from his agency:

(1) The Secretary of the Interior, whose representative shall be the Chairman.

(2) The Secretary of Agriculture.

(3) The Secretary of Commerce.

(4) The Secretary of Health, Education, and Welfare.

(5) The Director of the National Science Foundation.

(6) The Chairman of the Council on Environmental Quality.

(c) The Secretary of the Smithsonian Institution is invited to designate a representative.

(d) The Secretary of the Interior shall designate an Executive Secretary, and shall provide the necessary staff and administrative support for the Endangered Species Scientific Authority.

(e) In the discharge of its responsibilities the Endangered Species Scientific Authority shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the governmental and non-governmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

SEC. 4. The Secretary of the Interior shall develop and implement, in coordination with the Endangered Species Scientific Authority, the Secretary of the Treasury, and the heads of other interested agencies, a system to standardize and simplify the requirements, procedures and other activities related to the issuance of permits for the international and interstate shipment of fauna and flora, including, as appropriate, the parts or products of such fauna and flora.

SEC. 5. The Secretary of the Interior, in consultation with the Secretary of State, is hereby designated, in accord with Section 8(e) of the Endangered Species Act of 1973, to act on behalf of and to represent the United States of America in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 981). In the discharge of these responsibilities, the Secretary of the Interior shall also consult with the Secretaries of Agriculture and Commerce and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

GERALD R. FORD.

18. Executive Order 11752—Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities

38 Fed. Reg. 34793

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, provided:

By virtue of the authority vested in me as President of the United States of America, including section 301 of title 3 of the United States Code, and in furtherance of the purpose and policies of the Clean Air Act, as amended (42 U.S.C. 1857), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251), the Solid Waste Disposal Act, as amended (42 U.S.C. 3251), the Noise Control Act of 1972 (42 U.S.C. 4901), the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. 136), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321) [this chapter], it is ordered as follows:

SECTION 1. *Policy.* It is the purpose of this order to assure that the Federal Government, in the design, construction, management, operation, and maintenance of its facilities, shall provide leadership in the nationwide effort to protect and enhance the quality of our air, water, and land resources through compliance with applicable standards for the prevention, control, and abatement of environmental pollution in full cooperation with State and local governments. Compliance by Federal facilities with Federal, State, interstate, and local substantive standards and substantive limitations, to the same extent that any person is subject to such standards and limitations, will accomplish the objective of providing Federal leadership and cooperation in the prevention of environmental pollution. In light of the principle of Federal supremacy embodied in the Constitution, this order is not intended, nor should it be interpreted, to require Federal facilities to comply with State or local administrative procedures with respect to pollution abatement and control.

SEC. 2. *Definitions.* As used in this order:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Federal agencies" means the departments, agencies, establishments, and instrumentalities of the executive branch.

(3) The term "State, interstate, and local agencies" means any of the following:

(A) a State agency designated by the Governor of that State as an official State agency responsible for enforcing State and local laws relating to the prevention, control, and abatement of environmental pollution;

(B) any agency established by two or more States and having substantial powers or duties pertaining to the prevention, control, and abatement of environmental pollution;

(C) a city, county, or other local government authority charged with responsibility for enforcing ordinances or laws relating to the prevention, control, and abatement of environmental pollution; or

(D) an agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention, control, and abatement of environmental pollution.

(4) The term "facilities" means the buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal Government.

(5) The term "United States" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

SEC. 3. *Responsibilities.* (a) Heads of Federal agencies shall, with regard to all facilities under their jurisdiction in the United States:

(1) Ensure that applicable standards specified in section 4 of this order are met on a continuing basis.

(2) Cooperate with the Administrator and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution and, in accordance with guidelines issued by the Administrator, provide to the Administrator and to those agencies such information as is necessary to determine compliance with applicable standards. Such cooperation shall include development of an abatement plan and schedule for meeting applicable standards.

(3) Present to the Director of the Office of Management and Budget, annually, a plan to provide for such improvement in the design, construction, management, operation, and maintenance of existing facilities as may be necessary to meet applicable standards specified in section 4.

(4) Consider the environmental impact in the initial stages of planning for each new facility or modification to an existing facility in accordance with the National Environmental Policy Act [this chapter].

(5) Include with all budget requests for the design and construction of new facilities or for modification of existing facilities funds for such measures as may be necessary to meet applicable standards specified in section 4. Budget requests shall reflect the most efficient alternative for meeting applicable standards.

(6) Consult, as appropriate, with the Administrator and with State and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

(7) Ensure that any funds appropriated and apportioned for the prevention, control, and abatement of environmental pollution are not used for any other purpose unless permitted by law and unless specifically approved by the Office of Management and Budget.

(b) Where activities are carried out at Federal facilities acquired by leasing or other Federal agreements, the head of the responsible agency may at his discretion, to the extent permissible under applicable statutes and regulations, require the lessee or permittee to assume full responsibility for complying with standards for the prevention, control, and abatement of environmental pollution.

(c) Heads of Federal agencies responsible for the construction and operation of Federal facilities outside the United States shall assure that such facilities are operated so as to comply with the environmental pollution standards of general applicability in the host country or jurisdictions concerned.

(d) The Administrator shall:

(1) Provide technical advice and assistance to the heads of Federal agencies in connection with their duties and responsibilities under this order.

(2) Maintain such review of Federal facilities' compliance with the standards specified in section 4 as may be necessary.

(3) Provide liaison as required to assure that actions taken by Federal agencies pursuant to this order are coordinated with State, interstate, and local programs for the prevention, control, and abatement of environmental pollution.

(4) Mediate conflicts between Federal agencies and State, interstate, or local agencies in matters affecting the application of, or compliance with, applicable standards specified in section 4.

(5) Develop in consultation with the heads of other Federal agencies a coordinated strategy for Federal facility compliance with applicable standards specified in section 4 which incorporates, to the maximum extent practicable, common procedures for an integrated approach to Federal agency compliance with such standards, and issue such regulations and guidelines as are deemed necessary to facilitate implementation of that strategy and to provide a framework for coordination and cooperation among the Environmental Protection Agency, the other Federal agencies, and the State, interstate, and local agencies.

(6) Maintain a continuing review of the implementation of this order and, from time to time, report to the President on the progress of the Federal agencies in implementing this order.

SEC. 4. *Standards.* (a) Heads of Federal agencies shall ensure that all facilities under their jurisdiction are designed, constructed, managed, operated, and maintained so as to conform to the following requirements:

(1) Federal, State, interstate, and local air quality standards and emission limitations adopted in accordance with or effective under the provisions of the Clean Air Act, as amended [section 1857 et seq. of this title].

(2) Federal, State, interstate, and local water quality standards and effluent limitations respecting the discharge or runoff of pollutants adopted in accordance with or effective under the provisions of the Federal Water Pollution Control Act, as amended [section 1251 et seq. of Title 33. Navigation and Navigable Waters].

(3) Federal regulations and guidelines respecting dumping of material into ocean waters adopted in accordance with the Marine Protection, Research, and Sanctuaries Act of 1972 [section 1431 et seq. of Title 16, Conservation], and the Federal Water Pollution Control Act, as amended [section 1251 et seq. of Title 33, Navigation and Navigable Waters].

(4) Guidelines for solid waste recovery, collection, storage, separation, and disposal systems issued by the Administrator pursuant to the Solid Waste Disposal Act, as amended [section 3251 et seq. of this title].

(5) Federal noise emission standards for products adopted in accordance with provisions of the Noise Control Act of 1972 [section 4901 et seq. of this title] and State, interstate, and local standards for control and abatement of environmental noise.

(6) Federal guidance on radiation and generally applicable environmental radiation standards promulgated or recommended by the Administrator and adopted in accordance with the Atomic Energy Act, as amended (42 U.S.C. 2011), and rules, regulations, requirements, and guidelines on discharges of radioactivity as prescribed by the Atomic Energy Commission.

(7) Federal regulations and guidelines respecting manufacture, transportation, purchase, use, storage, and disposal of pesticides promulgated pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 [section 136 et seq. of Title 7, Agriculture].

(b) In those cases in which there are no environmental pollution standards as specified in subsection (a) for a particular geographic area or class of Federal facilities, the Administrator, in consultation with appropriate Federal, State, interstate, and local agencies, may issue regulations, which shall be published in the FEDERAL REGISTER, establishing environmental pollution standards for the purpose of this order.

SEC. 5. *Exemptions.* (a) The heads of Federal agencies, in consultation with the Administrator, may, from time to time, identify facilities or uses thereof which are exempted from applicable standards specified in section 4 in the interest of national security or in extraordinary cases in which it is in the paramount interest of the United States. No such exemptions shall be made except as are permissibe under applicable Federal law.

(b) In any case in which the Administrator does not agree with a determination to exempt a facility or use thereof from the provisions of this order, the head of the Federal agency making such a determination must have

the approval of the Director of the Office of Management and Budget to exempt that facility or use thereof; except that, the Administrator is solely responsible for approval of exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 [section 136 et seq. of Title 7, Agriculture].

(c) The heads of Federal agencies shall present to the Director of the Office of Management and Budget at the end of each calendar year a report of all exemptions made during that year, together with the justification for each such exemption.

SEC. 6. *Saving Provisions.* Except to the extent that they are inconsistent with this order, all outstanding rules, regulations, orders, delegations, or other forms of administrative action issued, made, or otherwise taken under the order superseded by Section 7 hereof or relating to the subject of this order shall remain in full force and effect until amended, modified, or terminated by proper authority.

SEC. 7. *Order Superseded.* Executive Order No. 11507 of February 4, 1970, is hereby superseded.

RICHARD NIXON

TITLE IV—FISH AND WILDLIFE CONSERVATON

1. Administration of Refuse Act Permit Program

Ex. Ord. 11574, 35 Fed. Reg. 19627

(See Ex. Order 11574 under Title III *Executive Orders*)

2. Alaska Native Claims

33 U.S.C. 1601–1624

Sec.

§ 1601. Congressional findings and declaration of policy.

Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(c) no provision of this chapter shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State or Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States Government, to make a study of all Federal programs primarily designed to benefit Native people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of December 18, 1971;

(d) no provision of this chapter shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlement involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;

(e) no provision of this chapter shall effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of Title 10 except as specifically provided in this chapter;

(f) no provision of this chapter shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this chapter; and

(g) no provision of this chapter shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89–136, the Public Works and Economic Development Act of 1965, as amended, shall be interpreted to include lands granted to Natives under this chapter as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

(Pub. L. 92–203, § 2, Dec. 18, 1971, 85 Stat. 688.)

§ 1602. Definitions.

For the purposes of this chapter, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title,

or which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

(d) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

(e) "Public lands" means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

(f) "State" means the State of Alaska;

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this chapter;

(h) "Person" means any individual, firm, corporation, association, or partnership;

(i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this chapter.

(k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 1605 of this title; and

(*l*) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 1616 of this title.

(Pub. L. 92–203, § 3, Dec. 18, 1971, 85 Stat. 689.)

§ 1603. Declaration of settlement.

(a) Aboriginal title extinguishment through prior land and water area conveyances.

All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) Aboriginal title and claim extinguishment where based on use and occupancy; submerged lands underneath inland and offshore water areas and hunting or fishing rights included.

All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) Aboriginal claim extinguishment where based on right, title, use, or occupancy of land or water areas; domestic statute or treaty relating to use and occupancy; or foreign laws; pending claims.

All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

(Pub. L. 92–203, § 4, Dec. 18, 1971, 85 Stat. 689.)

§ 1604. Enrollment.

(a) Eligible Natives; finality of decision.

The Secretary shall prepare within two years from December 18, 1971, a roll of all Natives who were born on or before, and who are living on, December 18, 1971. Any decision of the Secretary regarding eligibility for enrollment shall be final.

(b) Residence; order of priority in enrollment of Natives not permanent residents; regional family or hardship enrollment.

The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c) of this section, a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to section 1606(a) of this title shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to—

(1) the region where the Native resided on the 1970 census date if he had resided there without substantial interruption for two or more years;

(2) the region where the Native previously resided for an aggregate of ten years or more;

(3) the region where the Native was born; and

(4) the region from which an ancestor of the Native came.

The Secretary may enroll a Native in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) Election of enrollment in thirteenth region, if established, of Native nonresidents; dependent household members as bound.

A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established pursuant to section 1606(c) of this title. If such region is not established, he shall be enrolled as provided in subsection (b) of this section. His elec-

tion shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else. (Pub. L. 92–203, § 5, Dec. 18, 1971, 85 Stat. 690.)

§ 1605. Alaska Native Fund.

(a) Establishment in Treasury; deposits into Fund of general fund, interest, and revenue sharing moneys.

There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

(1) $462,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:

(A) $12,500,000 during the fiscal year in which this chapter becomes effective;

(B) $50,000,000 during the second fiscal year;

(C) $70,000,000 during each of the third, fourth, and fifth fiscal years;

(D) $40,000,000 during the sixth fiscal year; and

(E) $30,000,000 during each of the next five fiscal years.

(2) Four percent interest per annum, which is authorized to be appropriated, on any amount authorized to be appropriated by this paragraph that is not appropriated within six months after the fiscal year in which payable.

(3) $500,000,000 pursuant to the revenue sharing provisions of section 1608 of this title.

(b) Prohibition of expenditures for propaganda or political campaigns; misdemeanor; penalty.

None of the funds paid or distributed pursuant to this section to any of the Regional and Village Corporations established pursuant to this chapter shall be expended, donated, or otherwise used for the purpose of carrying on propaganda, or intervening in (including the publishing and distributing of statements) any political campaign on behalf of any candidate for public office. Any person who willfully violates the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than twelve months, or both.

(c) Distribution of Fund moneys among organized Regional Corporations; basis as relative number of Native enrollees in each region; reserve for payment of attorney or other fees; retention of share in Fund until organization of corporation.

After completion of the roll prepared pursuant to section 1604 of this title, all money in the Fund, except money reserved as provided in section 1619 of this title for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to section 1606 of this title on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized. (Pub. L. 92–203, § 6, Dec. 18, 1971, 85 Stat. 690.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1606, 1619, 1621 of this title.

§ 1606. Regional Corporations.

(a) Division of Alaska into twelve geographic regions; common heritage and common interest of region; area of region commensurate with operations of Native association; boundary disputes, arbitration.

For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Artic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwin River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

(b) Region mergers; limitation.

The Secretary may, on request made within one year of December 18, 1971, by representative and responsible leaders of the Native associations listed in subsection (a) of this section, merge two or more of the twelve regions: *Provided*, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

(c) Establishment of thirteenth region for nonresident Natives; majority vote; Regional Corporation for thirteenth region.

If a majority of all eligible Natives eighteen years of age or older who are not permanent residents of

Alaska elect, pursuant to section 1604(c) of this title, to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, the Secretary shall establish such a region for the benefit of the Natives who elected to be enrolled therein, and they may establish a Regional Corporation pursuant to this chapter.

(d) Incorporation; business for profits; eligibility for benefits; provisions in articles for carrying out chapter.

Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this chapter so long as it is organized and functions in accordance with this chapter. The articles of incorporation shall include provisions necessary to carry out the terms of this chapter.

(e) Original articles and bylaws; approval by Secretary prior to filing, submission for approval; amendments to articles; approval by Secretary; withholding approval in event of creation of inequities among Native individuals or groups.

The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after December 18, 1971. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) Board of directors; management; stockholders; provisions in articles or bylaws for number, term, and method of election.

The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

(g) Stock; issuance; provision in articles for division into classes and issuance of one hundred shares to Native regional enrollees.

The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this chapter, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 1604 of this title.

(h) Stockholders' rights; alienation restriction: period; exception, certain stock transfers pursuant to court decree; stock transfer: voting rights, escheat; stock, reissuance without restrictions after prescribed period.

(1) Except as otherwise provided in paragraph (2) of this subsection, stock issued pursuant to subsection (g) of this section shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that for a period of twenty years after December 18, 1971, the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated: *Provided,* That such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce or child support.

(2) Upon the death of any stockholder, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy, except that (A) during the twenty-year period after December 18, 1971, such stock shall carry voting rights only if the holder thereof through inheritance also is a Native, and (B), in the event the deceased stockholder fails to dispose of his stock by will and has no heirs under the applicable laws of intestacy, such stock shall escheat to the Regional Corporation.

(3) On January 1 of the twenty-first year after the year in which this chapter is enacted, all stock previously issued shall be deemed to be canceled, and shares of stock of the appropriate class shall be issued without restrictions required by this chapter to each stockholder share for share.

(i) Certain natural resource revenues; distribution among twelve Regional Corporations; computation of amount; subsection inapplicable to thirteenth Regional Corporation.

Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this chapter shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 1604 of this title. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

(j) Corporate funds and other net income, distribution among: stockholders of Regional Corporations; Village Corporations and nonresident stockholders; and stockholders of thirteenth Regional Corporation.

During the five years following December 18, 1971, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 1605 of this title (Alaska Native Fund), and under subsection (i) of this section (revenues from the timber resources and subsurface estate patented to it pursuant to this chapter), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection[1] to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under section 1605 of this title shall be distributed to the stockholders.

[1] So in original.

(k) Distributions among Village Corporation; computation of amount.

Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of residents in all villages.

(l) Distributions to Village Corporations; village plan: withholding funds until submission of plan for use of money; joint ventures and joint financing of projects; disagreements, arbitration of issues as provided in articles of Regional Corporation.

Funds distributed to a Village Corporation may be withheld until the village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

(m) Distributions among Village Corporations in a region; computation of dividends for nonresidents of village; financing regional projects with equitably withheld dividends and Village Corporation funds.

When funds are distributed among Village Corporations in a region, an amount computed as follows shall be distributed as dividends to the class of stockholders who are not residents of those villages: The amount distributed as dividends shall bear the same ratio to the amount distributed among the Village Corporations that the number of shares of stock registered on the books of the Regional Corporation in the names of nonresidents of villages bears to the number of shares of stock registered in the names of village residents: *Provided*, That an equitable portion of the amount distributed as dividends may be withheld and combined with Village Corporation funds to finance projects that will benefit the region generally.

(n) Projects for Village Corporations.

The Regional Corporation may undertake on behalf of one or more of the Village Corporations in the region any project authorized and financed by them.

(o) Annual audit; place; availability of papers, things, or property to auditors to facilitate audits; verification of transactions; report to stockholders, Secretary, and Congressional committees.

The accounts of the Regional Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of the State or the United States. The audits shall be conducted at the place or places where the accounts of the Regional Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers, things, or property belonging to or in use by the Regional Corporation and necessary to facilitate the audits shall be available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agent, and custodians shall be afforded to such person or persons. Each audit report or a fair and reasonably detailed summary thereof shall be transmitted to each stockholder, to the Secretary of the Interior and to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives.

(p) Federal-State conflict of laws.

In the event of any conflict between the provisions of this section and the laws of the State of Alaska, the provisions of this section shall prevail.

(q) Business management group; investment services contracts.

Two or more Regional Corporations may contract with the same business management group for investment services and advice regarding the investment of corporate funds. (Pub. L. 92–203, § 7, Dec. 18, 1971, 85 Stat. 691.)

§ 1607. Village Corporations.

(a) Organization of Corporation prerequisite to receipt of patent to lands or benefits under chapter.

The Native residents of each Native village entitled to receive lands and benefits under this chapter shall organize as a business for profit or nonprofit corporation under the laws of the State before the Native village may receive patent to lands or benefits under this chapter, except as otherwise provided.

(b) Regional Corporation: approval of initial articles; review and approval of amendments to articles and annual budgets; assistance in preparation of articles and other documents.

The initial articles of incorporation for each Village Corporation shall be subject to the approval of the Regional Corporation for the region in which the village is located. Amendments to the articles of incorporation and the annual budgets of the Village Corporations shall, for a period of five years, be subject to review and approval by the Regional Corporation. The Regional Corporation shall assist and advise Native villages in the preparation of articles of incorporation and other documents necessary to meet the requirements of this subsection.

(c) Regional Corporation stock alienation, annual audit, and transfer of stock ownership on death or by court decree: provisions applicable to Village Corporations; permissive transmittal of audits to congressional committees.

The provisions concerning stock alienation, annual audit, and transfer of stock ownership on death or by court decree provided for Regional Corporations in section 1606 of this title shall apply to Village Corporations except that audits need not be transmitted to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives. (Pub. L. 92–203, § 8, Dec. 18, 1971, 85 Stat. 694.)

§ 1608. Revenue sharing.

(a) Minerals within section.

The provisions of this section shall apply to all

minerals that are subject to disposition under the Mineral Leasing Act of 1920, as amended and supplemented.

(b) Interim payments into Alaska Native Fund based on percentage of gross value of produced or removed materials and of rentals and bonuses; time of payment.

With respect to conditional leases and sales of minerals heretofore or hereafter made pursuant to section 6(g) of the Alaska Statehood Act, and with respect to mineral leases of the United States that are/or may be subsumed by the State under section 6(h) of the Alaska Statehood Act, until such time as the provisions of subsection (c) of this section become operative the State shall pay into the Alaska Native Fund from the royalties, rentals, and bonuses hereafter received by the State (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under such leases or sales) of such minerals produced or removed from such lands, and (2) 2 per centum of all rentals and bonuses under such leases or sales, excluding bonuses received by the State at the September 1969 sale of minerals from tentatively approved lands and excluding rentals received pursuant to such sale before December 18, 1971. Such payment shall be made within sixty days from the date the revenues are received by the State.

(c) Patents; royalties: reservation of percentage of gross value of produced or removed minerals and of rentals and bonuses from disposition of minerals.

Each patent hereafter issued to the State under the Alaska Statehood Act, including a patent of lands heretofore selected and tentatively approved, shall reserve for the benefit of the Natives, and for payment into the Alaska Native Fund, (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under any disposition by the State) of the minerals thereafter produced or removed from such lands, and (2) 2 per centum of all revenues thereafter derived by the State from rentals and bonuses from the disposition of such minerals.

(d) Distribution of bonuses, rentals and royalties from Federal disposition of minerals in public lands; payments into Alaska Native Fund based on percentage of gross value of produced minerals and of rentals and bonuses; Federal and State share calculation on remaining balance.

All bonuses, rentals, and royalties received by the United States after December 18, 1971, from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

(e) Federal enforcement; State underpayment: deductions from grants-in-aid or other Federal assistance equal to underpayment and deposit of such amount in Fund.

The provisions of this section shall be enforceable by the United States for the benefit of the Natives, and in the event of default by the State in making the payments required, in addition to any other remedies provided by law, there shall be deducted annually by the Secretary of the Treasury from any grant-in-aid or from any other sums payable to the State under any provision of Federal law an amount equal to any such underpayment, which amount shall be deposited in the Fund.

(f) Oil and gas revenues; amount payable equal to Federal or State royalties in cash or kind.

Revenues received by the United States or the State as compensation for estimated drainage of oil or gas shall, for the purposes of this section, be regarded as revenues from the disposition of oil and gas. In the event the United States or the State elects to take royalties in kind, there shall be paid into the Fund on account thereof an amount equal to the royalties that would have been paid into the Fund under the provisions of this section had the royalty been taken in cash.

(g) Alaska Native Fund payments; cessation; reimbursement for advance payments.

The payments required by this section shall continue only until a sum of $500,000,000 has been paid into the Alaska Native Fund less the total of advance payments paid into the Alaska Native Fund pursuant to section 407 of the Trans-Alaska Pipeline Authorization Act. Thereafter, payments which would otherwise go into the Alaska Native Fund will be made to the United States Treasury as reimbursement for the advance payments authorized by section 407 of the Trans-Alaskan Pipeline Authorization Act. The provisions of this section shall no longer apply, and the reservation required in patents under this section shall be of no further force and effect, after a total sum of $500,000,000 has been paid to the Alaska Native Fund and to the United States Treasury pursuant to this subsection.

(h) Final payment; order of computation.

When computing the final payment into the Fund the respective shares of the United States and the State with respect to payments to the Fund required by this section shall be determined pursuant to this subsection and in the following order:

(1) first, from sources identified under subsecsections (b) and (c) hereof; and

(2) then, from sources identified under subsection (d) hereof.

(i) Outer Continental Shelf mineral revenues; provisions of section inapplicable.

The provisions of this section do not apply to mineral revenues received from the Outer Continental Shelf. (Pub. L. 92–203, § 9, Dec. 18, 1971, 85 Stat. 694, amended Pub. L. 93–153, title IV, § 407 (b), Nov. 16, 1973, 87 Stat. 591.)

AMENDMENTS

1973—Subsec. (g). Pub. L. 93–153 added provisions covering advance payments into the Alaska Native Fund pursuant to section 407 of the Trans-Alaska Pipeline Authorization Act and the reimbursement of the United States Treasury for payments made.

ADVANCE PAYMENTS TO ALASKA NATIVES UNTIL COMMENCEMENT OF DELIVERIES OF NORTH SLOPE CRUDE OIL TO PIPELINE

Section 407(a) of Pub. L. 93–153 provided that: "In view of the delay in construction of a pipeline to transport North Slope crude oil, the sum of $5,000,000 is authorized to be appropriated from the United States Treasury into the Alaska Native Fund every six months of each fiscal year beginning with the fiscal year ending June 30, 1976, as advance payments chargeable against the revenues to be paid under section 9 of the Alaska Native Claims Settlement Act [this section], until such time as the delivery of North Slope crude oil to a pipeline is commenced."

§ 1609. Limitation of actions.

(a) Complaint, time for filing; jurisdiction; commencement by State official; certainty and finality of vested rights, titles, and interests.

Notwithstanding any other provision of law, any civil action to contest the authority of the United States to legislate on the subject matter or the legality of this chapter shall be barred unless the complaint is filed within one year of December 18, 1971, and no such action shall be entertained unless it is commenced by a duly authorized official of the State. Exclusive jurisdiction over such action is hereby vested in the United States District Court for the District of Alaska. The purpose of this limitation on suits is to insure that, after the expiration of a reasonable period of time, the right, title, and interest of the United States, the Natives, and the State of Alaska will vest with certainty and finality and may be relied upon by all other persons in their relations with the State, the Natives, and the United States.

(b) Land selection: suspension and extension of rights.

In the event that the State initiates litigation or voluntarily becomes a party to litigation to contest the auhority of the United States to legislate on the subject matter or the legality of this chapter, all rights of land selection granted to the State by the Alaska Statehood Act shall be suspended as to any public lands which are determined by the Secretary to be potentially valuable for mineral development, timber, or other commercial purposes, and no selections shall be made, no tentative approval shall be granted, and no patents shall be issued for such lands during the pendency of such litigation. In the event of such suspension, the State's right of land selection pursuant to section 6 of the Alaska Statehood Act shall be extended for a period of time equal to the period of time the selection right was suspended. (Pub. L. 92–203, § 10, Dec. 18, 1971, 85 Stat. 696.)

§ 1610. Withdrawal of public lands.

(a) Description of withdrawn public lands; exceptions; National Wildlife Refuge lands exception; time of withdrawal.

(1) The following public lands are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

(A) The lands in each township that encloses all or part of any Native village identified pursuant to subsection (b) of this section;

(B) The lands in each township that is contiguous to or corners on the township that encloses all or part of such Native village; and

(C) The lands in each township that is contiguous to or corners on a township containing lands withdrawn by paragraph (B) of this subsection.

The following lands are excepted from such withdrawal: lands in the National Park System and lands withdrawn or reserved for national defense purposes other than Naval Petroleum Reserve Numbered 4.

(2) All lands located within the townships described in subsection (a)(1) hereof that have been selected by, or tentatively approved to, but not yet patented to, the State under the Alaska Statehood Act are withdrawn, subject to valid existing rights, from all forms of apropriation under the public land laws, including the mining and mineral leasing laws, and from the creation of third party interests by the State under the Alaska Statehood Act.

(3)(A) If the Secretary determines that the lands withdrawn by subsections (a) (1) and (2) hereof are insufficient to permit a Village or Regional Corporation to select the acreage it is entitled to select, the Secretary shall withdraw three times the deficiency from the nearest unreserved, vacant and unappropriated public lands. In making this withdrawal the Secretary shall, insofar as possible, withdraw public lands of a character similar to those on which the village is located and in order of their proximity to the center of the Native village: *Provided,* That if the Secretary, pursuant to section 1616, and 1621(e) of this title determines there is a need to expand the boundaries of a National Wildlife Refuge to replace any acreage selected in the Wildlife Refuge System by the Village Corporation the withdrawal under this section shall not include lands in the Refuge.

(B) The Secretary shall make the withdrawal provided for in subsection (3)(A) hereof on the basis of the best available information within sixty days of December 18, 1971, or as soon thereafter as practicable.

(b) List of Native villages subject to chapter; review; eligibility for benefits; expiration of withdrawals for villages; alternative eligibility; eligibility of unlisted villages.

(1) The Native villages subject to this chapter are as follows:

NAME OF PLACE AND REGION

Afognak, Afognak Island.
Akhiok, Kodiak.
Akiachak, Southwest Coastal Lowland.
Akiak, Southwest Coastal Lowland.
Akutan, Aleutian.
Alakanuk, Southwest Coastal Lowland.
Alatna, Koyukuk-Lower Yukon.
Aleknagik, Bristol Bay.
Allakaket, Koyukuk-Lower Yukon.
Ambler, Bering Strait.
Anaktuvuk, Pass, Arctic Slope.
Andreafsey, Southwest Coastal Lowland.
Aniak, Southwest Coastal Lowland.
Anvik, Koyukuk-Lower Yukon.
Arctic Village, Upper Yukon-Porcupine.
Atka, Aleutian.
Atkassok, Arctic Slope.
Atmautluak, Southwest Coastal Lowland.
Barrow, Arctic Slope.
Beaver, Upper Yukon-Porcupine.
Belkofsky, Aleutian.

NAME OF PLACE AND REGION—continued

Bethel, Southwest Coastal Lowland.
Bill Moore's, Southwest Coastal Lowland.
Biorka, Aleutian.
Birch Creek, Upper Yukon-Porcupine.
Brevig Mission, Bering Strait.
Buckland, Bering Strait.
Candle, Bering Strait.
Cantwell, Tanana.
Canyon Village, Upper Yukon-Porcupine.
Chalkyitsik, Upper Yukon-Porcupine.
Chanilut, Southwest Coastal Lowland.
Cherfornak, Southwest Coastal Lowland.
Chevak, Southwest Coastal Lowland.
Chignik, Kodiak.
Chignik Lagoon, Kodiak.
Chignik Lake, Kodiak.
Chistochina, Copper River.
Chitina, Copper River.
Chukwuktoligamute, Southwest Coastal Lowland.
Circle, Upper Yukon-Porcupine.
Clark's Point, Bristol Bay.
Copper Center, Copper River.
Crooked Creek, Upper Kuskokwim.
Deering, Bering Strait.
Dillingham, Bristol Bay.
Dot Lake, Tanana.
Eagle, Upper Yukon-Porcupine.
Eek, Southwest Coastal Lowland.
Egegik, Bristol Bay.
Eklutna, Cook Inlet.
Ekuk, Bristol Bay.
Ekwok, Bristol Bay.
Elim, Bering Strait.
Emmonak, Southwest Coastal Lowland.
English Bay, Cook Inlet.
False Pass, Aleutian.
Fort Yukon, Upper Yukon-Porcupine.
Gakona, Copper River.
Galena, Koyukuk-Lower Yukon.
Gambell, Bering Sea.
Georgetown, Upper Kuskokwim.
Golovin, Bering Strait.
Goodnews Bay, Southwest Coastal Lowland.
Grayling, Koyukuk-Lower Yukon.
Gulkana, Copper River.
Hamilton, Southwest Coastal Lowland.
Holy Cross, Koyukuk-Lower Yukon.
Hooper Bay, Southwest Coastal Lowland.
Hughes, Koyukuk-Lower Yukon.
Huslia, Koyukuk-Lower Yukon.
Igiugig, Bristol Bay.
Iliamna, Cook Inlet.
Inalik, Bering Strait.
Ivanof Bay, Aleutian.
Kaguyak, Kodiak.
Katovik, Arctic Slope.
Kalskag, Southwest Coastal Lowland.
Kaltag, Koyukuk-Lower Yukon.
Karluk, Kodiak.
Kasigluk, Southwest Coastal Lowland.
Kiana, Bering Strait.
King Cove, Aleutian.
Kipnuk, Southeast Coastal Lowland.
Kivalina, Bering Strait.
Kobuk, Bering Strait.
Kokhanok, Bristol Bay.
Koliganek, Bristol Bay.
Kongiganak, Southwest Coastal Lowland.
Kotlik, Southwest Coastal Lowland.
Kotzebue, Bering Strait.
Koyuk, Bering Strait.
Koyukuk, Koyukuk-Lower Yukon.
Kwethluk, Southwest Coastal Lowland.
Kwigillingok, Southwest Coastal Lowland.
Larsen Bay, Kodiak.
Levelock, Bristol Bay.
Lime Village, Upper Kuskokwim.
Lower Kalskag, Southwest Coastal Lowland.
McGrath, Upper Kuskokwim.
Makok, Koyukuk-Lower Yukon.
Manley Hot Springs, Tanana.
Manokotak, Bristol Bay.
Marshall, Southwest Coastal Lowland.
Mary's Igloo, Bering Strait.
Medfra, Upper Kuskokwim.
Mekoryuk, Southwest Coastal Lowland.
Mentasta Lake, Copper River.
Minchumina Lake, Upper Kuskokwim.
Minto, Tanana.
Mountain Village, Southwest Coastal Lowland.
Nabesna Village, Tranana.
Naknek, Bristol Bay.
Napaimute, Upper Kuskokwim.
Napakiak, Southwest Coastal Lowland.
Napaskiak, Southwest Coastal Lowland.
Nelson Lagoon, Aleutian.
Nenana, Tanana.
Newhalen, Cook Inlet.
New Stuyahok, Bristol Bay.
Newtok, Southwest Coastal Lowland.
Nightmute, Southwest Coastal Lowland.
Nikolai, Upper Kuskokwim.
Nikolski, Aleutian.
Ninilchik, Cook Inlet.
Noatak, Bering Strait.
Nome, Bering Strait.
Nondalton, Cook Inlet.
Nooiksut, Arctic Slope.
Noorvik, Bering Strait.
Northeast Cape, Bering Sea.
Northway, Tanana.
Nulato, Koyukuk-Lower Yukon.
Nunapitchuk, Southwest Coastal Lowland.
Ohogamiut, Southwest Coastal Lowland.
Old Harbor, Kodiak.
Oscarville, Southwest Coastal Lowland.
Ouzinkie, Kodiak.
Paradise, Koyukuk-Lower Yukon.
Pauloff Harbor, Aleutian.
Pedro Bay, Cook Inlet.
Perryville, Kodiak.
Pilot Point, Bristol Bay.
Pilot Station, Southwest Coastal Lowland.
Pitkas Point, Southwest Coastal Lowland.
Platinum, Southwest Coastal Lowland.
Point Hope, Artic Slope.
Point Lay, Arctic Slope.
Portage Creek (Ohgsenakale), Bristol Bay.
Port Graham, Cook Inlet.
Port Heiden (Meshick), Aleutian.

NAME OF PLACE AND REGION—continued
Port Lions, Kodiak.
Quinhagak, Southwest Coastal Lowland.
Rampart, Upper Yukon-Porcupine.
Red Devil, Upper Kuskokwim.
Ruby, Koyukuk-Lower Yukon.
Russian Mission or Chauthalue (Kuskokwim), Upper Kuskokwim.
Russian Mission (Yukon), Southwest Coastal Lowland.
St. George, Aleutian.
St. Mary's, Southwest Coastal Lowland.
St. Michael, Bering Strait.
St. Paul, Aleutian.
Salamatof, Cook Inlet.
Sand Point, Aleutian.
Savonoski, Bristol Bay.
Savoonga, Bering Sea.
Scammon Bay, Southwest Coastal Lowland.
Selawik, Bering Strait.
Seldovia, Cook Inlet.
Shageluk, Koyukuk-Lower Yukon.
Shaktoolik, Bering Strait.
Sheldon's Point, Southwest Coastal Lowland.
Shishmaref, Bering Strait.
Shungnak, Bering Strait.
Slana, Copper River.
Sleetmute, Upper Kuskokwim.
South Naknek, Bristol Bay.
Squaw Harbor, Aleutian.
Stebbins, Bering Strait.
Stevens Village, Upper Yukon-Porcupine.
Stony River, Upper Kuskokwim.
Takotna, Upper Kuskokwim.
Tanacross, Tanana.
Tanana, Koyukuk-Lower Yukon.
Tatilek, Chugach.
Tazlina, Copper River.
Telida, Upper Kuskokwim.
Teller, Bering Strait.
Tetlin, Tanana.
Togiak, Bristol Bay.
Toksook Bay, Southwest Coastal Lowland.
Tulusak, Southwest Coastal Lowland.
Tuntutuliak, Southwest Coastal Lowland.
Tununak, Southwest Coastal Lowland.
Twin Hills, Bristol Bay.
Tyonek, Cook Inlet.
Ugashik, Bristol Bay.
Unalakleet, Bering Strait.
Unalaska, Aleutian.
Unga, Aleutian.
Uyak, Kodiak.
Venetie, Upper Yukon-Porcupine.
Wainwright, Arctic Slope.
Wales, Bering Strait.
White Mountain, Bering Strait.

(2) Within two and one-half years from December 18, 1971, the Secretary shall review all of the villages listed in subsection (b)(1) hereof, and a village shall not be eligible for land benefits under section 1613 (a) and (b) of this title, and any withdrawal for such village shall expire, if the Secretary determines that—

(A) less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; or

(B) the village is of a modern and urban character, and the majority of the residents are non-Native.

Any Native group made ineligible by this subsection shall be considered under section 1613(h) of this title.

(3) Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this chapter and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from December 18, 1971, determines that—

(A) twenty-five or more Natives were residents of an established village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

(B) the village is not of a modern and urban character, and a majority of the residents are Natives.

(Pub. L. 92–203, § 11, Dec. 18, 1971, 85 Stat. 696.)

§ 1611. Native land selections.

(a) Acreage limitation; proximity of selections and size of sections and units.

(1) During a period of three years from December 18, 1971, the Village Corporation for each Native village identified pursuant to section 1610 of this title shall select, in accordance with rules established by the Secretary, all of the township or townships in which any part of the village is located, plus an area that will make the total selection equal to the acreage to which the village is entitled under section 1613 of this title. The selection shall be made from lands withdrawn by section 1610(a) of this title: *Provided,* That no Village Corporation may select more than 69,120 acres from lands withdrawn by section 1610(a)(2) and not more than 69,120 acres from the National Wildlife Refuge System, and not more than 69,120 acres in a National Forest: *Provided further,* That when a Village Corporation selects the surface estate to lands within the National Wildlife Refuge System or Naval Petroleum Reserve Numbered 4, the Regional Corporation, for that region may select the subsurface estate in an equal acreage from other lands withdrawn in section 1610(a) of this title within the region, if possible.

(2) Selections made under this subsection (a) of this section shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than 1,280 acres.

(b) Allocation; reallocation considerations.

The difference between twenty-two million acres and the total acreage selected by Village Corporations pursuant to subsection (a) of this section shall be allocated by the Secretary among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) on the basis of the number of Natives enrolled in each region. Each Regional Corporation shall reallocate such acreage among the Native villages within the region on an

equitable basis after considering historic use, subsistence needs, and population. The action of the Secretary or the Corporation shall not be subject to judicial review. Each Village Corporation shall select the acreage allocated to it from the lands withdrawn by section 1610(a) of this title.

(c) Computation.

The difference between thirty-eight million acres and the 22 million acres selected by Village Corporations pursuant to subsections (a) and (b) of this section shall be allocated among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) as follows:

(1) The number of acres each Regional Corporation is entitled to receive shall be computed (A) by determining on the basis of available data the percentages of all land in Alaska (excluding the southeastern region) that is within each of the eleven regions, (B) by applying that percentage to thirty-eight million acres reduced by the acreage in the southeastern region that is to be selected pursuant to section 1615 of this title and (C) by deducting from the figure so computed the number of acres within that region selected pursuant to subsections (a) and (b) of this section.

(2) In the event that the total number of acres selected within a region pursuant to subsections (a) and (b) of the section exceeds the percentage of the reduced thirty-eight million acres allotted to that region pursuant to subsection (c)(1)(B) of this section, that region shall not be entitled to receive any lands under this subsection (c). For each region so affected the difference between the acreage calculated pursuant to subsection (c)(1)(B) of this section and the acreage selected pursuant to subsections (a) and (b) shall be deducted from the acreage calculated under subsection (c)(1)(C) of this section for the remaining regions which will select lands under this subsection (c). The reductions shall be apportioned among the remaining regions so that each region's share of the total reduction bears the same proportion to the total reduction as the total land area in that region (as calculated pursuant to subsection (c)(1)(A) of this section[1] bears to the total land area in all of the regions whose allotments are to be reduced pursuant to this paragraph.

(3) Before the end of the fourth year after December 18, 1971, each Regional Corporation shall select the acreage allocated to it from the lands within the region withdrawn pursuant to section 1610(a)(1) and from the lands within the region withdrawn pursuant to section 1610(a)(3) of this title to the extent lands withdrawn pursuant to section 1610(a)(1) of this title are not sufficient to satisfy its allocation: *Provided,* That within the lands withdrawn by section 1610(a)(1) of this title the Regional Corporation may select only even numbered townships in even numbered ranges, and only odd numbered townships in odd numbered ranges.

(d) Village Corporation for Native village at Dutch Harbor; lands and improvements and patent for Village Corporation.

To insure that the Village Corporation for the Native village at Dutch Harbor, if found eligible for land grants under this chapter, has a full opportunity to select lands within and near the village, no federally owned lands, whether improved or not, shall be disposed of pursuant to the Federal surplus property disposal laws for a period of two years from December 18, 1971. The Village Corporation may select such lands and improvements and receive patent to them pursuant to section 1613(a) of this title.

(e) Disputes over land selection rights and boundaries; arbitration.

Any dispute over the land selection rights and the boundaries of Village Corporations shall be resolved by a board of arbitrators consisting of one person selected by each of the Village Corporations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Village Corporations. (Pub. L. 92–203, § 12, Dec. 18, 1971, 85 Stat. 701.)

§ 1612. Surveys.

(a) Areas for conveyance to Village Corporations; monumentation of exterior boundaries; meanderable water boundaries exempt from requirement; land occupied as primary place of residence or business, or for other purposes and other patentable lands as subject to survey.

The Secretary shall survey the areas selected or designated for conveyance to Village Corporations pursuant to the provisions of this chapter. He shall monument only exterior boundaries of the selected or designated areas at angle points and at intervals of approximately two miles on straight lines. No ground survey or monumentation will be required along meanderable water boundaries. He shall survey within the areas selected or designated land occupied as a primary place of residence, as a primary place of business, and for other purposes, and any other land to be patented under this chapter.

(b) Withdrawals, selections, and conveyances pursuant to chapter: current plats of surveys or protraction diagrams; conformity to Land Survey System.

All withdrawals, selections, and conveyances pursuant to this chapter shall be as shown on current plats of survey or protraction diagrams of the Bureau of Land Management, or protraction diagrams of the Bureau of the State where protraction diagrams of the Bureau of Land Management are not available, and shall conform as nearly as practicable to the United States Land Survey System. (Pub. L. 92–203, § 13, Dec. 18, 1971, 85 Stat. 702.)

§ 1613. Conveyance of lands.

(a) Native villages listed in section 1610 and qualified for land benefits; patents for surface estates; issuance; acreage.

Immediately after selection by a Village Corporation for a Native village listed in section 1610 of this title which the Secretary finds is qualified for land benefits under this chapter, the Secretary shall issue to the Village Corporation a patent to the surface estate in the number of acres shown in the following table:

[1] So in original without closing parenthesis mark.

If the village had on the 1970 census enumeration date a Native population between—	It shall be entitled to a patent to an area of public lands equal to—
25 and 99	69,120 acres.
100 and 199	92,160 acres.
200 and 399	115,200 acres.
400 and 599	138,240 acres.
600 or more	161,280 acres.

The lands patented shall be those selected by the Village Corporation pursuant to section 1611(a) of this title. In addition, the Secretary shall issue to the Village Corporation a patent to the surface estate in the lands selected pursuant to section 1611(b) of this title.

(b) Native villages listed in section 1615 and qualified for land benefits; patents for surface estates; issuance; acreage.

Immediately after selection by any Village Corporation for a Native village listed in section 1615 of this title which the Secretary finds is qualified for land benefits under this chapter, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands patented shall be the lands within the township or townships that enclose the Native village, and any additional lands selected by the Village Corporation from the surrounding townships withdrawn for the Native village by section 1615(a) of this title.

(c) Patent requirements; order of conveyance; advisory and appellate functions of Regional Corporations on sales, leases or other transactions prior to final commitment.

Each patent issued pursuant to subsections (a) and (b) of this section shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: *Provided*, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;

(4) the Village Corporation shall convey to the Federal Government, State or to the appropriate Municipal Corporation, title to the surface estate for existing airport sites, airway beacons, and other navigation aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways; and

(5) for a period of ten years after December 18, 1971, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

(d) Rule of approximation with respect to acreage limitations.

The Secretary may apply the rule of approximation with respect to the acreage limitations contained in this section.

(e) Surface and/or subsurface estates to Regional Corporations.

Immediately after selection by a Regional Corporation, the Secretary shall convey to the Regional Corporation title to the surface and/or the subsurface estates, as is appropriate, in the lands selected.

(f) Patents to Village Corporations for surface estates and to Regional Corporations for subsurface estates; excepted lands; mineral rights, consent of Village Corporations.

When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b) of this section, he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in section 1611(a)(1) of this title: *Provided*, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

(g) Valid existing rights preserved; saving provisions in patents; patentee rights; administration; proportionate rights of patentee.

All conveyances made pursuant to this chapter shall be subject to valid existing rights. Where, prior to patent of any land or minerals under this chapter, a lease, contract, permit, right-of-way, or easement (including a lease issued under section 6(g) of the Alaska Statehood Act) has been issued for the surface or minerals covered under such patent, the patent shall contain provisions making it subject to the lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of the State or the United States as lessor, contractor, permitter, or grantor, in any such leases, contracts, permits, rights-of-way, or easements covering the estate patented, and a lease issued under section 6(g) of the Alaska Statehood Act shall be treated for all purposes as though the patent had been issued to the State. The administration of such

lease, contract, permit, right-of-way, or easement shall continue to be by the State or the United States, unless the agency responsible for administration waives administration. In the event that the patent does not cover all of the land embraced within any such lease, contract, permit, right-of-way, or easement, the patentee shall only be entitled to the proportionate amount of the revenues reserved under such lease, contract, permit, right-of-way, or easement by the State or the United States which results from multiplying the total of such revenues by a fraction in which the numerator is the acreage of such lease, contract, permit, right-of-way, or easement which is included in the patent and the denominator is the total acreage contained in such lease contract, permit, right-of-way, or easement.

(h) Authorization of land conveyances.

The Secretary is authorized to withdraw and convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 1610 and 1615 of this title, and[1] follows:

(1) The Secretary may withdraw and convey to the appropriate Regional Corporation fee title to existing cemetery sites and historical places;

(2) The Secretary may withdraw and convey to a Native group that does not qualify as a Native village, if it incorporates under the laws of Alaska, title to the surface estate in not more than 23,040 acres surrounding the Native group's locality. The subsurface estate in such land shall be conveyed to the appropriate Regional Corporation;

(3) The Secretary may withdraw and convey to the Natives residing in Sitka, Kenai, Juneau, and Kodiak, if they incorporate under the laws of Alaska, the surface estate of lands of a similar character in not more than 23,040 acres of land, which shall be located in reasonable proximity to the municipalities. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporation unless the lands are located in a Wildlife Refuge:

(4) The Secretary shall withdraw only such lands surrounding the villages and municipalities as are necessary to permit the conveyance authorized by paragraphs (2) and (3) to be planned and effected;

(5) The Secretary may convey to a Native, upon application within two years from December 18, 1971, the surface estate in not to exceed 160 acres of land occupied by the Native as a primary place of residence on August 31, 1971. Determination of occupancy shall be made by the Secretary, whose decision shall be final. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporations;

(6) The Secretary shall charge against the 2 million acres authorized to be conveyed by this section all allotments approved pursuant to section 1617 of this title during the four years following December 18, 1971;

(7) The Secretary may withdraw and convey lands out of the National Wildlife Refuge System and out of the National Forests, for the purposes set forth in paragraphs (1), (2), (3), and (5) of this subsection; and

(8) Any portion of the 2 million acres not conveyed by this subsection shall be allocated and conveyed to the Regional Corporations on the basis of population.

(Pub. L. 92–203, § 14, Dec. 18, 1971, 85 Stat. 702.)

§ 1614. Timber sale contracts; modification.

Notwithstanding the provisions of existing National Forest timber sale contracts that are directly affected by conveyances authorized by this chapter, the Secretary of Agriculture is authorized to modify any such contract, with the consent of the purchaser, by substituting, to the extent practicable, timber on other national forest lands approximately equal in volume, species, grade, and accessibility for timber standing on any land affected by such conveyances, and, on request of the appropriate Village Corporation the Secretary of Agricuture is directed to make such substitution to the extent it is permitted by the timber sale contract without the consent of the purchaser. (Pub. L. 92–203, § 15, Dec. 18, 1971, 85 Stat. 705.)

§ 1615. Withdrawal and selection of public lands; funds in lieu of acreage.

(a) Withdrawal of public lands; list of Native villages.

All public lands in each township that encloses all or any part of a Native village listed below, and in each township that is contiguous to or corners on such township, except lands withdrawn or reserved for national defense purposes, are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the pubic land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

Angoon, Southeast.
Craig, Southeast.
Hoonah, Southeast.
Hydaburg, Southeast.
Kake, Southeast.
Kasaan, Southeast.
Klawock, Southeast.
Klukwan, Southeast.
Saxman, Southeast.
Yakutat, Southeast.

(b) Native land selections; Village Corporations for listed Native villages; acreage; proximity of selections; conformity to Lands Survey System.

During a period of three years from December 18, 1971, each Village Corporation for the villages listed in subsection (a) of this section shall select, in accordance with rules established by the Secretary, an area equal to 23,040 acres, which must include the township or townships in which all or part of the Native village is located, plus, to the extent necessary, withdrawn lands from the townships that are contiguous to or corner on such townships. All selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water, and shall conform as nearly as practicable to the United States Lands Survey System.

(c) Tlingit-Haida settlement.

The funds appropriated by the Act of July 9, 1968 (82 Stat. 307), to pay the judgment of the Court of Claims in the case of The Tlingit and Haida Indians of Alaska, et al. against The United States, numbered

[1] So in original.

47,900, and distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431), are in lieu of the additional acreage to be conveyed to qualified villages listed in section 1610 of this title. (Pub. L. 92–203, § 16, Dec. 18, 1971, 85 Stat. 705.)

§ 1616. Joint Federal-State Land Use Planning Commission for Alaska.

(a) Establishment; membership.

(1) There is hereby established the Joint Federal-State Land Use Planning Commission for Alaska. The Planning Commission shall be composed of ten members as follows:

(A) The Governor of the State (or his designate) and four members who shall be appointed by the Governor. During the Planning Commission's existence at least one member appointed by the Governor shall be a Native as defined by this chapter.

(B) One member appointed by the President of the United States with the advice and consent of the Senate, and four members who shall be appointed by the Secretary of the Interior.

(2) Cochairmen; concurrence in decisions of Commission.

The Governor of the State and the member appointed by the President pursuant to subsection (a) (1) (B) of this section, shall serve as cochairmen of the Planning Commission. The initial meeting of the Commission shall be called by the cochairmen. All decisions of the Commission shall require the concurrence of the cochairmen.

(3) Quorum; removal; vacancies.

Six members of the Planning Commission shall constitute a quorum. Members shall serve at the pleasure of the appointing authority. A vacancy in the membership of the Commission shall not effect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) Compensation and travel, subsistence, and other necessary expenses.

(A) Except to the extent otherwise provided in subparagraph (B) of this subsection, members of the Planning Commission shall receive compensation at the rate of $100 per day for each day they are engaged in the performance of their duties as members of the Commission. All members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission.

(B) Any member of the Planning Commission who is designated or appointed from the Government of the United States or from the Government of the State shall serve without compensation in addition to that received in his regular employment. The member of the Commission appointed by the President pursuant to subsection (a) (1) (B) of this section shall be compensated as provided by the President at a rate not in excess of that provided for level V of the Executive Schedule in Title 5.

(5) Cochairmen; appointment and compensation of personnel, experts, and consultants.

Subject to such rules and regulations as may be adopted by the Planning Commission, the cochairmen, without regard to the provisions of Title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power—

(A) to appoint and fix the compensation of such staff personnel as they deem necessary, and

(B) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of Title 5 , but at rates not to exceed $100 a day for individuals.

(6) Hearings; testimony and evidence; proceedings and reports; sessions; availability of information from Federal executive agencies.

(A) The Planning Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings, take such testimony, receive such evidence, print or otherwise reproduce and distribute so much of its proceedings and reports thereon, and sit and act at such times and places as the Commission, subcommittee, or member deems advisable.

(B) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by a cochairman, such information as the Commissions deems necessary to carry out its functions under this section.

(7) Duties and powers of Commission.

The Planning Commission shall—

(A) undertake a process of land-use planning, including the identification of and the making of recommendations concerning areas planned and best suited for permanent reservation in Federal ownership as parks, game refuges, and other public uses, areas of Federal and State lands to be made available for disposal, and uses to be made of lands remaining in Federal and State ownership;

(B) make recommendations with respect to proposed land selections by the State under the Alaska Statehood Act and by Village and Regional Corporations under this chapter;

(C) be available to advise upon and assist in the development and review of land-use plans for lands selected by the Native Village and Regional Corporations under this chapter and by the State under the Alaska Statehood Act;

(D) review existing withdrawals of Federal public lands and recommend to the President of the United States such additions to or modifications of withdrawals as are deemed desirable;

(E) establish procedures, including public hearings, for obtaining public views on the land-use planning programs of the State and Federal Governments for lands under their administration;

(F) establish a committee of land-use advisers to the Commission, made up of representatives of commercial and industrial land users in Alaska, recreational land users, wilderness users, environmental groups, Alaska Natives, and other citizens;

(G) make recommendations to the President of

the United States and the Governor of Alaska as to programs and budgets of the Federal and State agencies responsible for the administration of Federal and State lands;

(H) make recommendations from time to time to the President of the United States, Congress, and the Governor and legislature of the State as to changes in laws, policies, and programs that the Planning Commission determines are necessary or desirable;

(I) make recommendations to insure that economic growth and development is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska;

(J) make recommendations to improve coordination and consultation between the State and Federal Governments in making resource allocation and land-use decisions; and

(K) make recommendations on ways to avoid conflict between the State and the Native people in the selection of public lands.

(8) Reports to President, Congress, Governor, and Legislature; recordkeeping, public inspection.

(A) On or before January 31 of each year, the Planning Commission shall submit to the President of the United States, the Congress, and the Governor and legislature of the State a written report with respect to its activities during the preceding calendar year.

(B) The Planning Commission shall keep and maintain accurate and complete records of its activities and transactions in carrying out its duties under this chapter, and such records shall be available for public inspection.

(C) The principal office of the Planning Commission shall be located in the State.

(9) Federal share of costs; authorization of appropriations.

(A) The United States shall be responsible for paying for any fiscal year only 50 per centum of the costs of carrying out subsections (a) and (b) of this section for such fiscal year.

(B) For the purpose of meeting the responsibility of the United States in carrying out the provisions of this section, there is authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year.

(10) Final report to President, Congress, Governor, and Legislature; termination date.

On or before May 30, 1976, the Planning Commission shall submit its final report to the President of the United States, the Congress, and the Governor and Legislature of the State with respect to its planning and other activities under this chapter, together with its recommendations for programs or other actions which it determines should be taken or carried out by the United States and the State. The Commission shall cease to exist effective December 31, 1976.

(b) Public easements; continuance of access rights under valid existing rights.

(1) The Planning Commission shall identify public easements across lands selected by Village Corporations and the Regional Corporations and at periodic points along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important.

(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements: *Provided,* That any valid existing right recognized by this chapter shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

(3) Prior to granting any patent under this chapter to the Village Corporation and Regional Corporations, the Secretary shall consult with the State and the Planning Commission and shall reserve such public easements as he determines are necessary.

(c) Prohibition against selection of lands from withdrawn area in event of withdrawal of utility and transportation corridor across public lands.

In the event that the Secretary withdraws a utility and transportation corridor across public lands in Alaska pursuant to his existing authority, the State, the Village Corporations and the Regional Corporations shall not be permitted to select lands from the area withdrawn.

(d) Public Land Order Numbered 4582 revoked; withdrawal of unreserved public lands; classification and reclassification of lands; opening lands to appropriation; administration; contracting and other authority of Secretary not impaired by withdrawal.

(1) Public Land Order Numbered 4582, 34 Federal Register 1025, as amended, is hereby revoked. For a period of ninety days after December 18, 1971, all unreserved public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining (except locations for metalliferous minerals) and the mineral leasing laws. During this period of time the Secretary shall review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided for in existing law to insure that the public interest in these lands is properly protected. Any further withdrawal shall require an affirmative act by the Secretary under his existing authority, and the Secretary is authorized to classify or reclassify any lands so withdrawn and to open such lands to appropriation under the public land laws in accord with his classifications. Withdrawals pursuant to this paragraph shall not affect the authority of the Village Corporations, the Regional Corporations, and the State to make selections and obtain patents within the areas withdrawn pursuant to section 1610 of this title.

(2)(A) The Secretary, acting under authority provided for in existing law, is directed to withdraw

from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, and from selection by Regional Corporations pursuant to section 1610 of this title, up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska, including previously classified lands, which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems: *Provided,* That such withdrawals shall not affect the authority of the State and the Regional and Village Corporations to make selections and obtain patents within the areas withdrawn pursuant to section 1610 of this title.

(B) Lands withdrawn pursuant to paragraph (A) hereof must be withdrawn within nine months of December 18, 1971. All unreserved public lands not withdrawn under paragraph (A) or subsection (d)(1) of this section shall be available for selection by the State and for appropriation under the public land laws.

(C) Every six months, for a period of two years from December 18, 1971, the Secretary shall advise the Congress of the location, size and values of lands withdrawn pursuant to paragraph (A) and submit his recommendations with respect to such lands. Any lands withdrawn pursuant to paragraph (A) not recommended for addition to or creation as units of the National Park, Forest, Wlidlife Refuge, and Wild and Scenic Rivers Systems at the end of the two years shall be available for selection by the State and the Regional Corporations, and for appropriations under the public land laws.

(D) Areas recommended by the Secretary pursuant to paragraph (C) shall remain withdrawn from any appropriation under the public land laws until such time as the Congress acts on the Secretary's recommendations, but not to exceed five years from the recommendation dates. The withdrawal of areas not so recommended shall terminate at the end of the two year period.

(E) Notwithstanding any other provision of this subsection, initial identification of lands desired to be selected by the State pursuant to the Alaska Statehood Act and by the Regional Corporations pursuant to section 1611 of this title may be made within any area withdrawn pursuant to this subsection (d), but such lands shall not be tentatively approved or patented so long as the withdrawals of such areas remain in effect: *Provided,* That selection of lands by Village Corporations pursuant to section 1611 of this title shall not be affected by such withdrawals and such lands selected may be patented and such rights granted as authorized by this chapter. In the event Congress enacts legislation setting aside any areas withdrawn under the provisions of this subsection which the Regional Corporations or the State desired to select, then other unreserved public lands shall be made available for alternative selection by the Regional Corporations and the State. Any time periods established by law for Regional Corporations or State selections are hereby extended to the extent that delays are caused by compliance with the provisions of this subsection (2).

(3) Any lands withdrawn under this section shall be subject to administration by the Secretary under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal. (Pub. L. 92–203, § 17, Dec. 18, 1971, 85 Stat. 706.)

§ 1617. Indian allotment authority in Alaska; revocation; charging allotments on pending application against statutory acreage grant.

(a) No Native covered by the provisions of this chapter, and no descendant of his, may hereafter avail himself of an allotment under the provisions of the Act of February 8, 1887 (24 Stat. 389), as amended and supplemented, or the Act of June 25, 1910 (36 Stat. 863). Further, the Act of May 17, 1906 (34 Stat. 197), as amended, is hereby repealed. Notwithstanding the foregoing provisions of this section, any application for an allotment that is pending before the Department of the Interior on December 18, 1971, may, at the option of the Native applicant, be approved and a patent issued in accordance with said 1887, 1910, or 1906 Act, as the case may be, in which event the Native shall not be eligible for a patent under section 1613(h)(5) of this title.

(b) Any allotments approved pursuant to this section during the four years following December 18, 1971, shall be charged against the two million acre grant provided for in section 1613(h) of this title. (Pub. L. 92–203, § 18, Dec. 18, 1971, 85 Stat. 710.)

§ 1618. Reservations; revocation; excepted reserve; acquisition of title to surface and subsurface estates in reserve: election of Village Corporations.

(a) Notwithstanding any other provision of law, and except where inconsistent with the provisions of this chapter, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for administration of Native affairs, including those created under section 497 of Title 25, are hereby revoked subject to any valid existing rights of non-Natives. This section shall not apply to the Annette Island Reserve established by section 495 of Title 25 and no person enrolled in the Metlakatla Indian community of the Annette Island Reserve shall be eligible for benefits under this chapter.

(b) Notwithstanding any other provision of law or of this chapter, any Village Corporation or Corporations may elect within two years to acquire title to the surface and subsurface estates in any reserve set aside for the use or benefit of its stockholders or members prior to December 18, 1971. If two or more villages are located on such reserve the election must be made by all of the members or stockholders of the Village Corporations concerned. In such event, the Secretary shall convey the land to the Village Corporation or Corporations, subject to valid existing rights as provided in section 1613(g) of this title, and the Village Corporation shall not be eligible for any other land selections under this chapter or to any distribution of Regional Corporations funds pursuant to section 1606 of this title, and the enrolled residents of the Village Corporation shall not be eligible to receive Regional Corporation stock. (Pub. L. 92–203, § 19, Dec. 18, 1971, 85 Stat. 710.)

§ 1619. Attorney and consultant fees.

(a) Holding moneys in Fund for authorized payments.

The Secretary of the Treasury shall hold in the Alaska Native Fund, from the appropriation made pursuant to section 1605 of this title for the second fiscal year, moneys sufficient to make the payments authorized by this section.

(b) Claims; submission.

A claim for attorney and consultant fees and out-of-pocket expenses may be submitted to the Chief Commissioner of the United States Court of Claims for services rendered before December 18, 1971, to any Native tribe, band, group, village, or association in connection with:

(1) the preparation of this chapter and previously proposed Federal legislation to settle Native claims based on aboriginal title, and

(2) the actual prosecution pursuant to an authorized contract or a cause of action based upon a claim pending before any Federal or State Court or the Indians Claims Commission that is dismissed pursuant to this chapter.

(c) Same; filing date; form; information.

A claim under this section must be filed with the clerk of the Court of Claims within one year from December 18, 1971, and shall be in such form and contain such information as the Chief Commissioner shall prescribe. Claims not so filed shall be forever barred.

(d) Same; rules for receipt, determination, and settlement.

The Chief Commissioner or his delegate is authorized to receive, determine, and settle such claims in accordance with the following rules:

(1) No claim shall be allowed if the claimant has otherwise been reimbursed.

(2) The amount allowed for services shall be based on the nature of the service rendered, the time and labor required, the need for providing the service, whether the service was intended to be a voluntary public service or compensable, the existence of a bona fide attorney-client relationship with an identified client, and the relationship of the service rendered to the enactment of proposed legislation. The amount allowed shall not be controlled by any hourly charge customarily charged by the claimant.

(3) The amount allowed for out-of-pocket expenses shall not include office overhead, and shall be limited to expenses that were necessary, reasonable, unreimbursed and actually incurred.

(4) The amounts allowed for services rendered shall not exceed in the aggregate $2,000,000, of which not more than $100,000 shall be available for the payment of consultants' fees. If the approved claims exceed the aggregate amounts allowable, the Chief Commissioner shall authorize payment of the claims on a pro rata basis.

(5) Upon the filing of a claim, the clerk of the Court of Claims shall forward a copy of such claims to the individuals or entities on whose behalf services were rendered or fees and expenses were allegedly incurred, as shown by the pleadings, to the Attorney General of the United States, to the Attorney General of the State of Alaska, to the Secretary of the Interior, and to any other person who appears to have an interest in the claim, and shall give such persons ninety days within which to file an answer contesting the claim.

(6) The Chief Commissioner may designate a trial commissioner for any claim made under this section and a panel of three commissioners of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding commissioner of the panel.

(7) Proceedings in all claims shall be pursuant to rules and orders prescribed for the purpose by the Chief Commissioner who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Claims insofar as feasible. Claimants may appear before a trial commissioner in person or by attorney, and may produce evidence and examine witnesses. In the discretion of the Chief Commissioner or his designate, hearings may be held in the localities where the claimants reside if convenience so demands.

(8) Each trial commissioner and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, and shall have the power of subpena, the power to order audit of books and records, and the power to administer oaths and affirmations. Any sanction authorized by the rules of practice of the Court of Claims, except contempt, may be imposed on any claimant, witness, or attorney by the trial commissioner, review panel, or Chief Commissioner. None of the rules, regulations, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

(9) The findings and conclusions of the trial commissioner shall be submitted by him, together with the record in the case, to the review panel of commissioners for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitting the decision of the trial commissioner to the claimant and any party contesting the claim for consideration, exception, and argument before the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the trial commissioner.

(10) The Court of Claims is hereby authorized and directed, under such conditions as it may prescribe, to provide the facilities and services of the office of the clerk of the court for the filing, processing, hearing, and dispatch of claims made pursuant to this section and to include within its annual appropriations the costs thereof and other costs of administration, including (but without limitation to the items herein listed) the salaries and traveling expenses of its auditors and the commissioners serving as trial commissioners and panel members, mailing and service of process, necessary physical facilities, equipment, and supplies, and personnel (including secretaries, reporters, auditors, and law clerks).

(e) Report to Congress; payment of claims; interest restriction.

The Chief Commissioner shall certify to the Sec-

retary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The Secretary of the Treasury shall pay to such person from the Alaska Native Fund the amounts certified. No award under this section shall bear interest.

(f) Contract restriction; penalty.

(1) No remuneration on account of any services or expenses for which a claim is made or could be made pursuant to this section shall be received by any person for such services and expenses in addition to the amount paid in accordance with this section, and any contract or agreement to the contrary shall be void.

(2) Any person who receives, and any corporation or association official who pays, on account of such services and expenses, any remuneration in addition to the amount allowed in accordance with this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than twelve months, or both.

(g) Claims for cost in performance of certain services: submission, form, information, reasonableness, pro rata reductions; report to Congress; payment of claims; interest restriction.

A claim for actual costs incurred in filing protests, preserving land claims, advancing land claims settlement legislation, and presenting testimony to the Congress on proposed Native land claims may be submitted to the Chief Commissioner of the Court of Claims by any bona fide association of Natives. The claim must be submitted within six months from December 18, 1971, and shall be in such form and contain such information as the Chief Commissioner shall prescribe. The Chief Commissioner shall allow such amounts as he determines are reasonable, but he shall allow no amount for attorney and consultant fees and expenses which shall be compensable solely under subsection (b) through (e) of this section. If approved claims under this subsection aggregate more than $600,000, each claim shall be reduced on a pro rata basis. The Chief Commissioner shall certify to the Secretary of the Treasury, and report to the Congress, the amount of each claim allowed and the name and address of the claimant. The Secretary of the Treasury shall pay to such claimant from the Alaska Native Fund the amount certified. No award under this subsection shall bear interest. (Pub. L. 92–203, § 20, Dec. 18, 1971, 85 Stat. 710.)

§ 1620. Taxation.

(a) Fund revenues exemption; investment income taxable.

Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

(b) Shares of stock exemption.

The receipt of shares of stock in the Regional or Village Corporations by or on behalf of any Native shall not be subject to any form of Federal, State or local taxation.

(c) Land or land interests exemption; basis on disposition of land or land interests.

The receipt of land or any interest therein pursuant to this chapter or of cash in order to equalize the values of properties exchanged pursuant to section 1621(f) of this title shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of such land or interest in land for purposes of any Federal, State or local tax imposed on or measured by income shall be the fair value of such land or interest in land at the time of receipt.

(d) Real property interests: exemption period for interests not developed or leased, developed or leased interests taxable, certain real property interests taxable; derivative revenues or proceeds taxable.

Real property interests conveyed, pursuant to this chapter, to a Native individual, Native group, or Village or Regional Corporation which are not developed or leased to third parties, shall be exempt from State and local real property taxes for a period of twenty years after December 18, 1971: *Provided,* That municipal taxes, local real property taxes, or local assessments may be imposed upon leased or developed real property within the jurisdiction of any governmental unit under the laws of the State: *Provided further,* That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(e) Public lands status of real property interests exempt from real estate taxes for purposes of Federal highway and education laws; Federal fire protection services for real property interests without cost.

Real property interests conveyed pursuant to this chapter to a Native individual, Native group, or Village or Regional Corporation shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to Title 23, as amended and supplemented, for the purpose of the Johnson-O'Malley Act of April 16, 1934, as amended (section 452 of Title 25), and for the purpose of Public Laws 815 and 874, 81st Congress (64 Stat. 967, 1100), and so long as there are also no substantial revenues from such lands, continue to receive forest fire protection services from the United States at no cost. (Pub. L. 92–203, § 21, Dec. 18, 1971, 85 Stat. 713.)

§ 1621. Miscellaneous provisions.

(a) Contract restrictions; percentage fee; enforcement; liens, executions, or judgments.

None of the revenues granted by section 1605 of this title, and none of the lands granted by this chapter to the Regional and Village Corporation and to Native groups and individuals shall be subject to any contract which is based on a percentage fee of the value of all or some portion of the settlement granted by this chapter. Any such contract shall not be enforceable against any Native as defined by this chapter or any Regional or Village Corporation and

the revenues and lands granted by this chapter shall not be subject to lien, execution or judgment to fulfill such a contract.

(b) Patents for homesteads, headquarters sites, trade and manufacturing sites, or small tract sites; use and occupancy protection.

The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (section 682 of this title), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for a patent have been met even though the lands involved have been reserved or withdrawn in accordance with Public Land Order 4582, as amended, or the withdrawal provisions of this chapter: *Provided,* That occupancy must have been maintained in accordance with the appropriate public land law: *Provided further,* That any person who entered on public lands in violation of Public Land Order 4582, as amended, shall gain no rights.

(c) Mining claims; possessory rights; protection.

On any lands conveyed to Village and Regional Corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location under the general mining laws and recorded notice of said location with the appropriate State or local office shall be protected in his possessory rights, if all requirements of the general mining laws are complied with, for a period of five years and may, if all requirements of the general mining laws are complied with, proceed to patent.

(d) Purchase restrictions for personnel inapplicable to chapter.

The provisions of section 11 of this title shall not apply to any land grants or other rights granted under this chapter.

(e) National Wildlife Refuge System; replacement lands.

If land within the National Wildlife Refuge System is selected by a Village Corporation pursuant to the provisions of this chapter, the secretary shall add to the Refuge System other public lands in the State to replace the lands selected by the Village Corporation.

(f) Land exchanges.

The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

(g) National Wildlife Refuge System lands subject of patents; Federal reservation of first refusal rights; provision in patents for continuing application of laws and regulations governing Refuge.

If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this chapter, every patent issued by the Secretary pursuant to this chapter—which covers lands lying within the boundaries of a National Wildlife Refuge on December 18, 1971, shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge.

(h) Withdrawals of public lands; termination date.

(1) All withdrawals made under this chapter, except as otherwise provided in this subsection, shall terminate within four years of December 18, 1971: *Provided,* That any lands selected by Village or Regional Corporations or by a Native group under section 1611 of this title shall remain withdrawn until conveyed pursuant to section 1613 of this title.

(2) The withdrawal of lands made by section 1610(a)(2) and section 1615 of this title shall terminate three years from December 18, 1971.

(3) The provisions of this section shall not apply to any withdrawals made under section 1616 of this title.

(4) The Secretary is authorized to terminate any withdrawal made by or pursuant to this chapter whenever he determines that the withdrawal is no longer necessary to accomplish the purposes of this chapter.

(i) Administration of withdrawn lands; contracting and other authority of Secretaries not impaired by withdrawal.

Prior to a conveyance pursuant to section 1613 of this title, lands withdrawn by or pursuant to sections 1610, 1613, and 1615 of this title shall be subject to administration by the Secretary, or by the Secretary of Agriculture in the case of National Forest lands, under applicable laws and regulations, and their authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal.

(j) Administration actions in absence of protraction diagrams and nonconformity to Land Survey System to accomplish purposes of chapter; deed notation of adjustments to insure beneficiaries of land grants their full entitlement.

In any area of Alaska for which protraction diagrams of the Bureau of Land Management or the State do not exist, or which does not conform to the United States Land Survey System, or which has not been surveyed in a manner adequate to withdraw and grant the lands provided for under this chapter, the Secretary shall take such actions as are necessary to accomplish the purposes of this chapter, and the deeds granted shall note that upon completion of an adequate survey appropriate adjustments will be made to insure that the beneficiaries of the land grants receive their full entitlement.

(k) National forest land patents; conditions.

Any patents to lands under this chapter which are located within the boundaries of a national forest

shall contain such conditions as the Secretary deems necessary to assure that:

(1) the sale of any timber from such lands shall, for a period of five years, be subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and

(2) such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands for a period of twelve years.

(*l*) Land selection limitation; proximity to home rule or first class city and Ketchikan.

Notwithstanding any provision of this chapter, no Village or Regional Corporation shall select lands which are within two miles from the boundary, as it exists on December 18, 1971, of any home rule or first class city (excluding boroughs) or which are within six miles from the boundary of Ketchikan. (Pub. L. 92–203, § 22, Dec. 18, 1971, 85 Stat. 713.)

§ 1622. Annual reports to Congress until 1984; submission in 1985 of report of status of Natives, summary of actions taken, and recommendations.

The Secretary shall submit to the Congress annual reports on implementation of this chapter. Such reports shall be filed by the Secretary annually until 1984. At the beginning of the first session of Congress in 1985 the Secretary shall submit, through the President, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under this chapter, together with such recommendations as may be appropriate. (Pub. L. 92–203, § 23, Dec. 18, 1971, 85 Stat. 715.)

§ 1623. Authorization of appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. (Pub. L. 92–203, § 24, Dec. 18, 1971, 85 Stat. 715.)

§ 1624. Regulations; issuance; publication in Federal Register.

The Secretary is authorized to issue and publish in the Federal Register, pursuant to the Administrative Procedure Act, such regulations as may be necessary to carry out the purposes of this chapter. (Pub. L. 92–203, § 25, Dec. 18, 1971, 85 Stat. 715.)

3. Alaska Statehood Act Relating to Fish and Wildlife

48 U.S.C. Chap. 2—Alaska § 6

Chapter 2.—ALASKA

ADMISSION AS STATE

Alaska was admitted into the Union on January 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, set out below, as required by sections 1 and 8(c) of the Alaska Statehood Law, Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out below.

ALASKA STATEHOOD

Pub. L. 85–508, July 7, 1958, 72 Stat. 339, as amended, provided:

* * * * *

"Sec. 6. [Selection from public lands; fish and wildlife resources; public school support; mineral leases, permits, leases, or contracts; mineral land grants; schools and colleges; confirmation of grants; internal improvements; submerged lands.]

"(a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within twenty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied: *Provided further*, That for the purposes of this section the term 'public lands of the United States in Alaska which are vacant, unappropriated, and unreserved' shall include, without limiting the use thereof, the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

"(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within twenty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: *And provided further*, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

"(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the following purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

"(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

"(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U.S.C., secs 192–211), as amended, and under the provisions of the Alaska commercial fisheries, laws of June 26, 1906 (34 Stat. 478; 48 U.S.C., secs. 230—239 and

241—242), and June 6, 1924 (43 Stat. 465; 48 U.S.C., secs. 221—228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided,* That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety calendar days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: *Provided,* That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section 8(a) of the Act of September 2, 1937, as amended (16 U.S.C., sec. 669g–1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U.S.C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea otter skins made in accordance with the provisions of the Fur Seal Act of 1966 [section 1151 et seq. of Title 16, Conservation]. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Fur Seal Act of 1966, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands, and the payments made to any municipal corporation established pursuant to section 206 of the Fur Seal Act of 1966 [section 1166 of title 16] and to the civil service retirement and disability fund pursuant to section 208 of the Fur Seal Act of 1966 section [1168 of title 16.] In administering the Pribilof Islands fund established by section 407 of the Fur Seal Act of 1966 [section 1187 of title 16], the Secretary shall consult with the State of Alaska annually. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Fur Seal Act of 1966 and the Northern Pacific Halibut Act of 1937 (16 U.S.C. 772—7721)." (As amended Pub. L. 89–702, title IV, § 408(b), Nov. 2, 1966, 80 Stat. 1098.)

"(f) Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to said State to be used for the support of the public schools within said State.

"(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection or, in the case of selections under subsec. (a) of this section, one hundred and sixty acres. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the State. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U.S.C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words 'equitable claims subject to allowance and confirmation' include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

"(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 920 (41 Stat. 437; 30 U.S.C. 181 and the following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741; 30 U.S.C.[1] 432 and the following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless an application to select such lands is filed with the Secretary of the Interior within a period of ten years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act. When all of the lands subject to a lease, permit, license, or contract are selected, the patent for the lands so selected shall vest in the State of Alaska all the right, title, and interest of the United States in and to that lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all the rentals, royalties, and other payments accruing after that date under that lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of that lease, permit, license, or contract: *Provided,* That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder. Where only a portion of the lands subject to a lease, permit, license, or contract are selected, there shall be reserved to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contract; upon the termination of the lease, permit, license, or contract, title to the minerals so reserved to the United States shall pass to the State of Alaska."

"(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided,* That any lands or minerals hereafter disposed of contrary to the

[1] So in original. Probably should read "48 U.S.C.".

provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

"(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

"(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U.S.C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U.S.C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act [July 7, 1958] shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

"(l) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U.S.C., sec. 857), and in lieu of the swampland grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U.S.C., sec. 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U.S.C., secs. 301–308), which grants are hereby declared not to extend to the State of Alaska.

"(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder. (As amended Pub. L. 86–70, § 2(b), June 25, 1959, 73 Stat. 141; Pub. L. 86–173, Aug. 18, 1959, 73 Stat. 395; Pub. L. 86–786, §§ 3, 4, Sept. 14, 1960, 74 Stat. 1025; Pub. L. 88–135, Oct. 8, 1963, 77 Stat. 223; Pub. L. 88–289, Mar. 25, 1964, 78 Stat. 169.)"

4. Delegation of Functions of Fish and Wildlife Conservation

Ex. Ord. 10654

(See Ex. Ord. 10654 under Title IV *Executive Orders*)

5. Endangered Species of Fish and Wildlife

16 U.S.C. 1531–1543

Sec.

§ 1531. Congressional findings and declaration of purposes and policy.

(a) The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in

danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter. (Pub. L. 93–205, § 2, Dec. 28, 1973, 87 Stat. 884.)

§ 1532. Definitions.

For the purpose of this chapter—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.

(2) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(3) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(4) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.

(5) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(6) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(7) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(9) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(10) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this chapter and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(11) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller

taxa in common spatial arrangement that interbreed with mature.

(12) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(13) The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

(14) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(15) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(16) The term "United States", when used in a geographical context, includes all States.

(Pub. L. 93–205, § 3, Dec. 28, 1973, 87 Stat. 885; as amended Pub. L. 94–359, § 5, July 12, 1976, 90 Stat. 913.)

AMENDMENTS

1976—Paragraph (1), Pub. L. 94–359 added the proviso to paragraph (1).

§ 1533. Determination of endangered species and threatened species.

(a) Generally.

(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species,

he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(b) Basis for determinations.

(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

(c) Lists.

(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under section 553(e) of Title 5, conduct a review of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list in effect on December 27, 1973, of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this chapter, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this chapter. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of Title 5.

(d) Protective regulations.

Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title, in the case of fish or wildlife, or section 1538(a)(2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535(a) of this title only to the extent that such regulations have also been adopted by such State.

(e) Similarity of appearance cases.

The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

(f) Regulations.

(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of Title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.

(2)(A) In the case of any regulation proposed by the Secretary to carry out the purposes of this chapter—

(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

(ii) if any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the Federal Register.

(B) Neither subparagraph (A) of this paragraph nor section 553 of Title 5 shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

(i) Any regulation appropriate to carry out the purposes of this chapter which was originally promulgated to carry out the Endangered Species Conservation Act of 1969.

(ii) Any regulation (including any regulation implementing section 1535(g)(2)(B)(ii) of this title) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b)(1)(A) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a statement by the Secretary of the facts on which such regulation is based and the relationship of such facts to such regulation. (Pub. L. 93–205, § 4, Dec. 28, 1973, 87 Stat. 886; as amended Pub. L. 94–359, § 1, July 12, 1976, 90 Stat. 911.)

AMENDMENTS

1976—Subsec. (f)(2)(B)(ii), Pub. L. 94–359 substituted "subsection (b)(1)(A)" for "subsection (b)(A), (B), and (C)".

§ 1534. Land acquisition.

(a) The Secretary of the Interior shall establish and implement a program to conserve (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 1533 of this title; or (B) plants which are concluded in Appen-

dices to the Convention. To carry out such program, he—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section. (Pub. L. 93–205, § 5, Dec. 28, 1973, 87 Stat. 889.)

§ 1535. Cooperation with the States.

(a) Generally.

In carrying out the program authorized by this chapter, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) Management agreements.

The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 715s of this title.

(c) Cooperative agreements.

In furtherance of the purposes of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(1) authority resides in the States agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(2) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this chapter, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(4) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species; and

(5) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened.

(d) Allocation of funds.

(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this chapter;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

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The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) Review of State programs.

Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Conflicts between Federal and State laws.

Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter. This chapter shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.

(g) Transition.

(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on December 28, 1973, and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after December 28, 1973, or (B) the date of the close of the 15-month period following December 28, 1973.

(2) The prohibitions set forth in or authorized pursuant to sections 1533(d) and 1538(a)(1)(B) of this title shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to subsection (c) of this section (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of Title 5 or any other provision of this chapter; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) Regulations.

The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) Authorization of appropriations.

For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,000,000. (Pub. L. 93–205, § 6, Dec. 28, 1973, 87 Stat. 889.)

§ 1536. Interagency cooperation.

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical. (Pub. L. 93–205, § 7, Dec. 28, 1973, 87 Stat. 892.)

§ 1537. International cooperation.

(a) Financial assistance.

As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 724 of Title 31, use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 1533 of this title. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 1542 of this title.

(b) Encouragement of foreign programs.

In order to carry out further the provisions of this chapter, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife including endangered species and threatened species listed pursuant to section 1533 of this title;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and their habitat.

(c) Personnel.

After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) Investigations.

After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this chapter.

(e) Convention implementation.

The President is authorized and directed to designate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. (Pub. L. 93–205, § 8, Dec. 28, 1973, 87 Stat. 892.)

§ 1538. Prohibited acts.

(a) Generally.

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(C) sell or offer for sale in interstate or foreign commerce any such species; or

(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(b) Species held in captivity or controlled environment.

The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on December 28, 1973, if the purposes of such holding are not contrary to the purposes of this chapter; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from December 28, 1973, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on December 28, 1973.

(c) Violation of Convention.

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this title

but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter.

(d) Imports and exports.

(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) Reports.

It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 1533 of this title as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

(f) Designation of ports.

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons, if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc–4 (d) of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations.

It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in his section. (Pub. L. 93–205, § 9, Dec. 28, 1973, 87 Stat. 893.)

§ 1539. Exceptions.

(a) Permits.

The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species.

(b) Hardship exemptions.

(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 1533 of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 1538(a) of this title to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to December 28, 1973, shall expire in accordance with the terms of section 668cc–3 of this title; and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue

economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this chapter to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this chapter; or

(C) curtailment of subsistence taking made unlawful under this chapter by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) Notice and review.

The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding: except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.

(d) Permit and exemption policy.

The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 1531 of this title.

(e) Alaska natives.

(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this chapter. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 1373 of this title, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) (1) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 1538(a)(1)(A) of this title.

(B) Any prohibition set forth in section 1538(a)(1)(E) or (F) of this title.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 1538(a) of this title which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 1533(f)(2)(A)(i) of this title.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 1538(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 1538(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(g) In connection with any action alleging a violation of section 1538, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation. (Pub. L. 93–205, § 10, Dec. 28, 1973, 87 Stat. 896; as amended Pub. L. 94–359, §§ 2, 3, July 12, 1976, 90 Stat. 911, 912.)

AMENDMENTS

1976—Subsec. (c) Pub. L. 94–359, § 3(2), added a semicolon and all that follows.

Subsec. (f) and (g), Pub. L. 94–359, § 2, added subsec. (f) and (g).

§ 1540. Penalties and enforcement.

(a) Civil penalties.

(1) Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of this chapter, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), or (C), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 1538 of this title, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of any other regulation issued under this chapter may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise violates any provision of this chapter, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation.

No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of Title 5. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Criminal violations.

(1) Any person who willfully commits an act which violates any provision of this chapter, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), or (C), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 1538 of this title shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who willfully commits an act which violates any provisions of any other regulation issued under this chapter shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this chapter or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(c) District court jurisdiction.

The several district courts of the United States, including the courts enumerated in section 460 of Title 28, shall have jurisdiction over any actions arising under this chapter. For the purpose of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) Rewards.

Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal volation of any provsion of this chapter or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(e) Enforcement.

(1) The provisions of this chapter and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this chapter.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this chapter may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Depart-

ment in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this chapter, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this chapter, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b)(1) of this section.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be exercised or performed by the Secretary or by such persons as he may designate.

(f) Regulations.

The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen suits.

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g)(2)(B)(ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) If the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or

common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) Coordination with other laws.

The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this chapter with the administration of the animal quarantine laws (sections 101 to 105, 111 to 135b, and 612 to 614 of Title 21) and section 1306 of Title 19. Nothing in this chapter or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this chapter shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this chapter shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 1527 of Title 19, relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country. (Pub. L. 93–205, § 11, Dec. 28, 1973, 87 Stat. 897; as amended Pub. L. 94–359, § 4, July 12, 1976, 90 Stat. 913.)

§ 1541. Endangered plants.

The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after December 28, 1973, the results of such review including recommendations for new legislation or the amendment of existing legislation. (Pub. L. 93–205, § 12, Dec. 28, 1973, 87 Stat. 901.)

§ 1542. Authorization of appropriations.

Except as authorized in section 1535 of this title, there are authorized to be appropriated—

(1) not to exceed $10,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this chapter; and

(2) not to exceed $2,000,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this chapter.

(Pub. L. 93–205, § 15, Dec. 28, 1973, 87 Stat. 903; as amended Pub. L. 94–325, June 30, 1976, 90 Stat. 724.)

§ 1543. Construction with Marine Mammal Protection Act of 1972.

Except as otherwise provided in this chapter, no provision of this chapter shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972. (Pub. L. 93–205, § 17, Dec. 28, 1973, 87 Stat. 903.)

6. Federal Assistance, Resources Conservation and Development Projects

7 U.S.C. 1010–1013

Sec.

§ 1010. Land conservation and land utilization.

The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises. (July 22, 1937, ch. 517, title III, § 31, 50 Stat. 525; Sept. 27, 1962, Pub. L. 87–703, title I, § 102(a), 76 Stat. 607; Nov. 8, 1966, Pub. L. 89–796, § 1(a), 80 Stat. 1478.)

AMENDMENTS

1966—Pub. L. 89–796 inserted "developing and protecting recreational facilities," following "protecting fish and wildlife,".

1962—Pub. L. 87–703 eliminated reference to "including the retirement of lands which are submarginal or not primarily suitable for cultivation," following "land utilization", provided for assistance in protecting fish and wildlife and prohibited the building of industrial parks or establishment of private industrial or commercial enterprises.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1011, 1033 of this title; title 16 sections 441h, 478a; title 30 section 601.

§ 1010a. Soil, water and related resource data; report.

In recognition of the increasing need for soil, water, and related source data for land conservation, use, and development, for guidance of community development for a balanced rural-urban growth, for

identification of prime agriculture producing areas that should be protected, and for use in protecting the quality of the environment, the Secretary of Agriculture is directed to carry out a land inventory and monitoring program to include, but not be limited to, studies and surveys of erosion and sediment damages, flood plain identification and utilization, land use changes and trends, and degradation of the environment resulting from improper use of soil, water, and related resources. The Secretary shall issue at not less than twenty-year intervals a land inventory report reflecting soil, water, and related resource conditions. (Pub. L. 92–419, title III, § 302, Aug. 30, 1972, 86 Stat. 670.)

§ 1011. Powers of Secretary of Agriculture.

To effectuate the program provided for in section 1010 of this title, the Secretary is authorized—

(a) Repealed. Pub. L. 87–703, title I, § 102(b), Sept. 27, 1962, 76 Stat. 607.

(b) To protect, improve, develop, and administer any property so acquired and to construct such structures thereon as may be necessary to adapt it to its most beneficial use.

(c) To sell, exchange, lease, or otherwise dispose of, with or without a consideration, any property so acquired, under such terms and conditions as he deems will best accomplish the purposes of sections 1010 to 1013 of this title, but any sale, exchange, or grant shall be made only to public authorities and agencies and only on condition that the property is used for public purposes: *Provided, however,* That an exchange may be made with private owners and with subdivisions or agencies of State governments in any case where the Secretary of Agriculture finds that such exchange would not conflict with the purposes of sections 1001 to 1005d, 1006, 1006c to 1006e, 1007, and 1008 to 1029 of this title, and that the value of the property received in exchange is substantially equal to that of the property conveyed. The Secretary may recommend to the President other Federal, State, or Territorial agencies to administer such property, together with the conditions of use and administration which will best serve the purposes of a land-conservation and land-utilization program, and the President is authorized to transfer such property to such agencies.

(d) With respect to any land, or any interest therein, acquired by, or transferred to, the Secretary for the purposes of sections 1010 to 1013 of this title, to make dedications or grants, in his discretion, for any public purpose, and to grant licenses and easements upon such terms as he deems reasonable.

(e) To cooperate with Federal, State, territorial, and other public agencies and local nonprofit organizations in developing plans for a program of land conservation and land utilization, to assist in carrying out such plans by means of loans to State and local public agencies and local nonprofit organizations designated by the State legislature or the Governor, to conduct surveys and investigations relating to conditions and factors affecting, and the methods of accomplishing most effectively the purposes of this subchapter, and to disseminate information concerning these activities. Loans to State and local public agencies and to local nonprofit organizations shall be made only if such plans have been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over such plans, or by the Governor if there is no such State agency. No appropriation shall be made for any single loan under this subsection in excess of $250,000 unless such loan has been approved by resolutions adopted by the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Loans under this subsection shall be made under contracts which will provide, under such terms and conditions as the Secretary deems appropriate, for the repayment thereof in not more than 30 years, with interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury on its marketable public obligations outstanding at the beginning of the fiscal year in which the loan is made, which are neither due nor callable for redemption for 15 years from date of issue. Repayment of principal and interest on such loans shall begin within 5 years. In providing assistance for carrying out plans developed under this subchapter, the Secretary shall be authorized to bear such proportionate share of the costs of installing any works of improvement applicable to public water-based fish and wildlife or recreational development as is determined by him to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs: *Provided,* That all engineering and other technical assistance costs relating to such development may be borne by the Secretary: *Provided further,* That when a State or other public agency or local nonprofit organization participating in a plan developed under this subchapter agrees to operate and maintain any reservoir or other area included in a plan for public water-based fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the State or other public agency or local nonprofit organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: *Provided further,* That in no event shall the Secretary share any portion of the cost of installing more than one such work of improvement for each seventy-five thousand acres in any project; and that any such public water-based fish and wildlife or receptional development shall be consistent with any existing comprehensive statewide outdoor recreation plan found adequate for purposes of the Land and Water Conservation Fund Act of 1965; and that such cost-sharing assistance for any such development shall be authorized only if the Secretary determines that it cannot be provided under other existing authority.

The Secretary shall also be authorized in providing assistance for carrying out plans developed under this subchapter:

(1) To provide technical and other assistance, and to pay for any storage of water for present or anticipated future demands or needs for rural community water supply included in any reservoir structure constructed or modified pursuant to such plans:

Provided, That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the public agency or local nonprofit organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment of the cost of such water supply storage within the life of the reservoir structure: *Provided further*, That the public agency or local nonprofit organization prior to initiation or construction or modification of any reservoir structure including water supply storage, make provision satisfactory to the Secretary to pay for not less than 50 per centum of the cost of storage for present water supply demands, and all of the cost of storage for anticipated future demands: *And provided further*, That the cost to be borne by the public agency or local nonprofit organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands except that (1) no payment on account of such cost need be made until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the advancement for such water supply is first made, which are neither due nor callable for redemption for fifteen years from date of issue;

(2) To provide, for the benefit of rural communities, technical and other assistance and such proportionate share of the costs of installing measures and facilities for water quality management, for the control and abatement of agriculture-related pollution, for the disposal of solid wastes, and for the storage of water in reservoirs, farm ponds, or other impoundments, together with necessary water withdrawal appurtenances, for rural fire protection, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs.

(f) To make such rules and regulations as he deems necessary to prevent trespasses and otherwise regulate the use and occupancy of property acquired by, or transferred to, the Secretary for the purposes of sections 1010 to 1013 of this title, in order to conserve and utilize it or advance the purposes of said sections. Any violation of such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States commissioner specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401 (b)—(e) of Title 18. (July 22, 1937, ch. 517, title III, § 32, 50 Stat. 525; July 28, 1942, ch. 531, 56 Stat. 725; Sept. 27, 1962, Pub. L. 87–703, title I, § 102 (b), (c), 76 Stat. 607; Oct. 23, 1962, Pub. L. 87–869, § 7, 76 Stat. 1157; Aug. 31, 1964, Pub. L. 88–537, 78 Stat. 745; Nov. 8, 1966, Pub. L. 89–796, § 1(b), 80 Stat. 1478; July 16, 1970, Pub. L. 91–343, 84 Stat. 439.)

(As amended Aug. 30, 1972, Pub. L. 92–419, title III, § 301, 86 Stat. 669.)

AMENDMENTS

1972—Subsec. (e). Pub. L. 92–419 added par. (1) and (2) provisions which authorized Secretary of Agriculture to provide Federal assistance for water storage and for water quality management, for control and abatement of agriculture-related pollution, for disposal of solid wastes, and for storage of water in reservoirs, farm ponds, or other impoundments, together with necessary water withdrawal appurtenances, for rural fire protection.

1970—Subsec. (e). Pub. L. 91–343 added provisions authorizing the Secretary to bear an equtable share of the costs of installing works of improvement, to bear all engineering and other technical assistance costs, and to bear up to one half of the costs of land, easements or rights of way and minimum basic public facilities, and limited the federal contribution to one work of improvement for each seventy five thousand acres in any project where such assistance is not provided under any other authority.

1966—Pub. L. 89–796 added "local nonprofit organizations" to the enumerated public agencies to which this section is applicable.

1964—Subsec. (f). Pub. L. 88–537 provided that persons charged with violation of such rules and regulations may be tried and sentenced by any United States commissioner specially designated for that purpose by the court by which he was appointed, in the same manner as in section 3401 (b)—(e) of Title 18, Crimes and Criminal Procedure.

1962—Subsec. (a). Pub. L. 87–703 § 102(b), repealed the authority of the Secretary to acquire submarginal land and land not primarily suitable for cultivation, and interests in and options on such land.

Subsec. (e). Pub. L. 87–703, § 102(c), authorized the Secretary to assist in carrying out the plans by means of loans to State and local public agencies, conditioned loans on absence of disapproval of plans within 45 days, prescribed a $250,000 limitation on appropriation for a single loan without prior committee approval and provided for loan contracts and interest and repayment of principal and interest.

Subsec. (f). Pub. L. 87–869 substituted "by a fine of not more than $500 or imprisonment for not more than six months, or both" for "as prescribed in section 104 of Title 18."

1942—Subsec. (c). Act July 28, 1942, added proviso.

§ 1012. Payments to counties.

As soon as practicable after the end of each calendar year, the Secretary shall pay to the county in which any land is held by the Secretary under sections 1010 to 1013 of this title, 25 per centum of the net revenues received by the Secretary from the use of the land during such year. In case the land is situated in more than one county, the amount to be paid shall be divided equitably among the respective counties. Payments to counties under this section shall be made on the condition that they are used for school or road purposes, or both. This section shall not be construed to apply to amounts received from the sale of land. (July 22, 1937, ch. 517, title III, § 33 50 Stat. 526.)

§ 1012a. Townsites.

When the Secretary of Agriculture determines that a tract of National Forest System land in

Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: *Provided, however,* That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands. (Pub. L. 85–569, July 31, 1958, 72 Stat. 438; amended Pub. L. 94–579, § 213, Oct. 21, 1976, 90 Stat. 2760.)

§ 1013. Appropriations.

CODIFICATION

Section, act July 22, 1937, ch. 517, title III, § 34, 50 Stat. 526, related to appropriations and expired by its own limitations at end of fiscal year 1940.

7. Fish and Wildlife Conservation at Small Watershed Projects

16 U.S.C. 1001–1009

Sec.

§ 1001. Declaration of policy.

Erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting, and improving the Nation's land and water resources and the quality of the environment. (As amended Aug. 30, 1972, Pub. L. 92–419, title II, § 201(a), 86 Stat. 667.)

AMENDMENTS

1972—Pub. L. 92–419 expanded the declaration of policy to include conservation and utilization of land, improvement of land and water resources, and quality of the environment.

§ 1002. Definitions.

For the purposes of this chapter, the following terms shall mean:

The "Secretary"—the Secretary of Agriculture of the United States.

"Works of improvement"—any undertaking for—

(1) flood prevention (including structural and land treatment measures),

(2) the conservation, development, utilization, and disposal of water, or

(3) the conservation and proper utilization of land,

in watershed or subwatershed area not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than twelve thousand five hundred acre-feet of floodwater detention capacity, and more than twenty-five thousand acre-feet of total capacity. No appropriation shall be made for any plan involving an estimated Federal contribution to construction costs in excess of $250,000, or which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the appropriate committees of the Senate and House of Representatives: *Provided,* That in the case of any plan involving no single structure providing more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives and in the case of any plan involving any single structure of more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Public Works of the Senate and the Committee on Public Works of the House of Representatives, respectively. A number of such subwatersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire.

"Local organization"—any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations

thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement; or any irrigation or reservoir company, water users' association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary. (Aug. 4, 1954, ch. 656, § 2, 68 Stat. 666; Aug. 7, 1956, ch. 1027, § 1(a), 70 Stat. 1088; Aug. 30, 1961, Pub. L. 87–170, 75 Stat. 408; Nov. 8, 1965, Pub. L. 89–337, 79 Stat. 1300.)

(As amended Aug. 30, 1972, Pub. L. 92–419, title II, § 201(b), 86 Stat. 667.)

AMENDMENTS

1972—Pub. L. 92–419 defined "works of improvement" to include any undertaking for the conservation and proper utilization of land.

1965—Pub. L. 89–337 substituted "more than twelve thousand five hundred acre-feet of floodwater detention capacity" for "more than five thousand acre-feet of floodwater detention capacity".

1961—Pub. L. 87–170 included irrigation or reservoir companies, water users' associations and similar organizations not operated for profit in the definition of local organization.

1956—Act Aug. 7, 1956, eliminated provisions which limited works of improvement to agriculture phases of conservation, development, utilization, and disposal of water, increased the limits of total capacity of any single structure from 5,000 acre-feet to 25,000 acre-feet, excluded single structures which provide more than 5,000 acre-feet of floodwater detention capacity, required approval of plans involving an estimated Federal contribution to construction costs of more than $250,000, and specified the Congressional committees that must approve the plans where structures are under and over 4,000 acre-feet of total capacity.

§ 1003. Assistance to local organizations.

In order to assist local organizations in preparing and carrying out plans for works of improvement, the Secretary is authorized, upon application of local organizations if such application has been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over programs provided for in this chapter, or by the Governor if there is no State agency having such responsibility—

(1) to conduct such investigations and surveys as may be necessary to prepare plans for works of improvement;

(2) to prepare plans and estimates required for adequate engineering evaluation;

(3) to make allocations of costs to the various purposes to show the basis of such allocations and to determine whether benefits exceed costs;

(4) to cooperate and enter into agreements with and to furnish financial and other assistance to local organizations: *Provided*, That, for the land-treatment measures, the Federal assistance shall not exceed the rate of assistance for similar practices under existing national programs;

(5) to obtain the cooperation and assistance of other Federal agencies in carrying out the purposes of this section;

(6) to enter into agreements with landowners, operators, and occupiers, individually or collectively, based on conservation plans of such landowners, operators, and occupiers which are developed in cooperation with and approved by the soil and water conservation district in which the land described in the agreement is situated, to be carried out on such land during a period of not to exceed ten years, providing for changes in cropping systems and land uses and for the installation of soil and water conservation practices and measures needed to conserve and develop the soil, water, woodland, wildlife, and recreation resources of lands within the area included in plans for works of improvement, as provided for in such plans, including watershed or subwatershed work plans in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented. Applications for assistance in developing such conservation plans shall be made in writing to the soil and water conservation district involved, and the proposed agreement shall be reviewed by such district. In return for such agreements by landowners, operators, and occupiers the Secretary shall agree to share the costs of carrying out those practices and measures set forth in the agreement for which he determines that cost sharing is appropriate and in the public interest. The portion of such costs, including labor, to be shared shall be that part which the Secretary determines is appropriate and in the public interest for the carrying out of the practices and measures set forth in the agreement, except that the Federal assistance shall not exceed the rate of assistance for similar practices and measures under existing national programs. The Secretary may terminate any agreement with a landowner, operator, or occupier by mutual agreement if the Secretary determines that such termination would be in the public interest, and may agree to such modifications of agreements, previously entered into hereunder, as he deems desirable to carry out the purposes of this paragraph or to facilitate the practical administration of the agreements provided for herein. Notwithstanding any other provision of law, the Secretary, to the extent he deems it desirable to carry out the purposes of this paragraph, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of any crop; or (2) surrender of any such history and allotments.

(As amended Aug. 30, 1972, Pub. L. 92–419, title II, § 201(c), 86 Stat. 667.)

REFERENCES IN TEXT

Section 13 of Act Dec. 22, 1944 (58 Stat. 887), as amended and supplemented, referred to in par. (6), and part of provisions popularly known as Flood Control Act of 1944, was not classified to the Code.

AMENDMENTS

1972—Par. (6). Pub. L. 92–419 added par. (6).

1956—Act. Aug. 7, 1956, substituted in par. (2) provisions authorizing the Secretary to prepare plans and estimates required for adequate engineering evaluation for provisions which authorized the Secretary to make studies for physical and economic soundness of plans for works of improvement, added par. (3), and redesignated former pars. (3) and (4) as (4) and (5).

EXTENSION OF BENEFITS TO PROJECTS AUTHORIZED BEFORE AUG. 7, 1956

Amendment of this section by act Aug. 7, 1956, as applicable to all works of improvement and plans for such works under the provisions of this chapter, see section 2 of such act Aug. 7, 1956, set out as a note under section 1001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1007, 1008 of this title.

§ 1004. Conditions for Federal assistance.

The Secretary shall require as a condition to providing Federal assistance for the installation of works of improvement that local organizations shall—

(1) acquire, or with respect to interests in land to be acquired by condemnation provide assurances satisfactory to the Secretary that they will acquire, without cost to the Federal Government from funds appropriated for the purposes of this chapter, such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with Federal assistance: *Provided,* That when a local organization agrees to operate and maintain any reservoir or other area included in a plan for public fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the local organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: *Provided further,* That the Secretary shall be authorized to participate in recreational development in any watershed project only to the extent that the need therefor is demonstrated in accordance with standards established by him, taking into account the anticipated man-days of use of the projected recreational development and giving consideration to the availability within the region of existing water-based outdoor recreational developments: *Provided further,* That the Secretary shall be authorized to participate in not more than one recreational development in a watershed project containing less than seventy-five thousand acres, or two such developments in a project containing between seventy-five thousand and one hundred and fifty thousand acres, or three such developments in projects exceeding one hundred and fifty thousand acres: *Provided further,* That when the Secretary and a local organization have agreed that the immediate acquisition by the local organization of land, easements, or right-of-way is advisable for the preservation of sites for works of improvement included in a plan from encroachment by residential, commercial, industrial, or other development, the Secretary shall be authorized to advance to the local organization from funds appropriated for construction of works of improvement the amounts required for the acquisition of such land, easements or rights-of-way; and, except where such costs are to be borne by the Secretary, such advance shall be repaid by the local organization, with interest, prior to construction of the works of improvement, for credit to such construction funds;

(2) assume (A) such proportionate share, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs, of the costs of installing any works of improvement, involving Federal assistance (excluding engineering costs), which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water or for fish and wildlife development, recreational development, ground water recharge, water quality management, or the conservation and proper utilization of land: *Provided,* That works of improvement for water quality management shall consist primarily of water storage capacity in reservoirs for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source, and shall be consistent with standards and regulations adopted by the Water Resources Council on Federal cost sharing for water quality management, and

(B) all of the cost of installing any portion of such works applicable to other purposes except that any part of the construction cost (including engineering costs) applicable to flood prevention and features relating thereto shall be borne by the Federal Government and paid for by the Secretary out of funds appropriated for the purposes of this chapter: *Provided,* That, in addition to and without limitation on the authority of the Secretary to make loans or advancements under section 1006a of this title, the Secretary may pay for any storage of water for present or anticipated future demands or needs for municipal or industrial water included in any reservoir structure constructed or modified under the provisions of this chapter as hereinafter provided: *Provided further,* That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the local organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment within the life of the reservoir structure of the cost of such storage: *Provided further,* That the Secretary shall determine prior to initiation of construction or modification of any reservoir structure including such water supply storage that there are adequate assurances by the local organization or by an agency of the State having authority to give such assurances, that the Secretary will be reimbursed the cost of water supply storage for antici-

pated future demands, and that the local organization will pay not less than 50 per centum of the cost of storage for present water supply demands: *And provided further*, That the cost to be borne by the local organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands, except that (1) no reimbursement of the cost of such water supply storage for anticipated future demands need be made until such supply is first used, and (2) no interest shall be charged on the cost of such water-supply storage for anticipated future demands until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be determined in accordance with the provisions of section 1006a of this title.

(3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture;

(4) acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement;

(5) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance; and

(6) submit a plan of repayment satisfactory to the Secretary for any loan or advancement made under the provisions of section 1006a of this title.

(Aug. 4, 1954, ch. 656, § 4, 68 Stat. 667; Aug. 7, 1956, ch. 1027, § 1 (c—e), 70 Stat. 1088; Sept. 2, 1958, Pub. L. 85–865, § 1, 72 Stat. 1605; June 29, 1960, Pub. L. 86–545, 74 Stat. 254; Sept. 27, 1962, Pub. L. 87–703, title I, §§ 103, 104, 76 Stat. 608.)

(As amended Aug. 30, 1972, Pub. L. 92–419, title II, § 201(d)–(f), 86 Stat. 668.)

AMENDMENTS

1972—Par. (1). Pub. L. 92–419, § 201(d), inserted after "without cost to the Federal Government" the words "from funds appropriated for the purposes of this chapter".

Par. (2)(A). Pub. L. 92–419, § 201(e), substituted "fish and wildlife development, recreational development, ground water recharge, water quality management, or the conservation and proper utilization of land", for "fish and wildlife or recreational development" and added water quality management proviso.

Par. (2)(B). Pub. L. 92–419, § 201(f), in revising the text and making changes in phraseology, authorized payment for water storage for present demands, inserted at end of first proviso "as hereinafter provided", substituted provisions respecting Secretary's determination of adequate assurances by the local agency or by an agency of the State having authority to give such assurances that the Secretary will be reimbursed the cost of water supply storage for anticipated future demands, and that the local organization will pay not less than 50 per centum of the cost of storage for present water supply demands, for provisions respecting the giving of reasonable assurances by the local organization of repayment of cost of such water supply storage for anticipated future demands, and substituted permissive provisions for repayment of cost for anticipated future demands within life of the reservoir structure for former mandatory provisions.

1962—Par. (1). Pub. L. 87–703, § 103(1), added provisos respecting cost sharing, participation, number of recreational developments and advances of funds.

Par. (2)(A). Pub. L. 87–703, § 103(2), substituted "national needs and assistance authorized for similar purposes under other Federal programs" for "the direct identifiable benefits" and inserted "(excluding engineering costs)" following "Federal assistance" and "or recreational" preceding "development."

Par. (2)(B). Pub. L. 87–703, § 104, added provisos respecting water storage payments and limitation on amount of such payments, repayment agreements and period of time for repayment and provisions for commencement of repayment, interest-free period and rate of interest.

1960—Par. (1). Pub. L. 86–545 inserted provisions requiring local organizations to provide assurances with respect to interests in land to be acquired by condemnation.

1958—Par. (2)(A). Pub. L. 85–865 inserted after "and disposal of water" the words "or for fish and wildlife development".

1956—Par. 2. Act Aug. 7, 1956, § 1 (c), required local organizations to assume a proportionate share of costs applicable to agricultural water management in consideration of the direct identifiable benefits, and all the costs of works applicable to other purposes, and provided that the Federal Government shall bear the entire construction costs for flood prevention.

Par. (4). Act Aug. 7, 1956, § 1 (d), inserted "or water users", following "landowners".

Par. (6). Act Aug. 7, 1956, § 1 (e), added par. (6).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–865 provided that: "The Secretary of Agriculture shall not furnish or agree to furnish financial assistance to local organizations for the institution of works of improvement for fish and wildlife development pursuant to the authority of this Act [amending par. (2) (A) of this section] prior to July 1, 1958."

EXTENSION OF BENEFITS TO PROJECTS AUTHORIZED BEFORE AUG. 7, 1956

Amendment of this section by act Aug. 7, 1956, as applicable to all works of improvement and plans for such works under the provisions of this chapter, see section 2 of such act Aug. 7, 1956, set out as a note under section 1001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1005 of this title.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, "this Act", meaning Act Aug. 4, 1954, which is classified to this chapter and section 701b of Title 33, Navigation and Navigable Waters.

§ 1005. Works of improvement.

(1) Engineering and other services; reimbursement; advances.

At such time as the Secretary and the interested local organization have agreed on a plan for works of improvement, and the Secretary has determined that the benefits exceed the costs, and the local organization has met the requirements for participation in carrying out the works of improvement as

set forth in section 1004 of this title, the local organization may secure engineering and other services, including the design, preparation of contracts and specifications, awarding of contracts, and supervision of construction, in connection with such works of improvement, by retaining or employing a professional engineer or engineers satisfactory to the Secretary or may request the Secretary to provide such services: *Provided*, That if the local organization elects to employ a professional engineer or engineers, the Secretary shall reimburse the local organization for the costs of such engineering and other services secured by the local organization as are properly chargeable to such works of improvement in an amount not to exceed the amount agreed upon in the plan for works of improvement or any modification thereof: *Provided further*, That the Secretary may advance such amounts as may be necessary to pay for such services, but such advances with respect to any works of improvement shall not exceed 5 per centum of the estimated installation cost of such works.

(2) Federal construction; request by local organization.

Except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure: *Provided*, That, if requested to do so by the local organization, the Secretary may enter into contracts for the construction of structures.

(3) Transmission of certain plans to Congress.

Whenever the estimated Federal contribution to the construction cost of works of improvement in the plan for any watershed or subwatershed area shall exceed $250 000 or the works of improvement include any structure having a total capacity in excess of twenty-five hundred acre-feet, the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President.

(4) Transmission of certain plans and recommendations to Congress.

Any plans for works of improvement involving an estimated Federal contribution to construction costs in excess of $250,000 or including any structure having a total capacity in excess of twenty-five hundred acre-feet (a) which includes works of improvement for reclamation or irrigation, or which affects public or other lands or wildlife under the jurisdiction of the Secretary of the Interior, (b) which includes Federal assistance for goodwater[1] detention structures, (c) which includes features which may affect the public health, or (d) which includes measures for control or abatement of water pollution, shall be submitted to the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, or the Administrator of the Environmental Protection Agency, respectively, for his views and recommendations at least thirty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, if received by the Secretary prior to the expiration of the above thirty-day period, shall accompany the plan transmitted by the Secretary to the Congress through the President.

(5) Rules and regulations.

Prior to any Federal participation in the works of improvement under this chapter, the President shall issue such rules and regulations as he deems necessary or desirable to carry out the purposes of this chapter, and to assure the coordination of the work authorized under this chapter and related work of other agencies, including the Department of the Interior and the Department of the Army. (Aug. 4, 1954, ch. 656, § 5, 68 Stat. 667; July 19, 1956, ch. 639, 70 Stat. 580; Aug. 7, 1956, ch. 1027, § 1(f), 70 Stat. 1089; Sept. 27, 1962, Pub. L. 87–703, title I, § 105, 76 Stat. 609; June 27, 1968, Pub. L. 90–361, 82 Stat. 250.)

(As amended Aug. 30, 1972, Pub. L. 92–419, title II, § 201(g), 86 Stat. 669.)

AMENDMENTS

1972—Subd. (4). Pub. L. 92-419 substituted in item (a) "works of improvement for reclamation or irrigation" for "reclamation or irrigation works", in item (b) "goodwater" for "floodwater", added items (c) and (d), required submission of plans to Secretary of Health, Education, and Welfare, or the Administrator of the Environmental Protection Agency and transmittal of views and recommendations of such officials to the Congress.

1968—Subd. (2). Pub. L. 90–361 added proviso authorizing the Secretary to enter into contracts for the construction of structures if requested to do so by the local organization.

1962—Subd. (1). Pub. L. 87–703 designated existing provisions as subd. (1); substituted "local organization may secure" for "local organization with such assistance as it may request from the Secretary, which assistance the Secretary is authorized to give, shall secure" and "by retaining or employing a professional engineer or engineers satisfactory to the Secretary or may request the Secretary to provide such services" for "and in order to properly carry out such services in such projects as to such structures therein providing for municipal or industrial water supplies, the local organization shall, and in such projects not providing for municipal or industrial water supplies, the local organization may, retain or employ a professional engineer or engineers satisfactory to the Secretary"; eliminated ", except that if the local organization decides not to retain or employ a professional engineer or if the Secretary determines that competent engineering services are not available he may contract for a competent engineer to provide such services or arrange for employees of the Federal Government to provide such services" following "chargeable to such works of improvement"; provided for reimbursement for other services; and required the reimbursement not to exceed the amount agreed upon in the plan for works of improvement or any modification thereof.

Subd. (2). Pub. L. 87–703 designated existing provisions as subd. (2); and eliminated following "structure" "unless there is no local organization authorized by State law to undertake such construction or to enter into such contract, and in no event after July 1, 1956: *Provided*, That in participating in the installation of such works of improvement the Secretary, as far as practicable and consistent with his responsibilities for administering the overall national agricultural program, shall utilize the authority conferred upon him by the provisions of this chapter."

Subds. (3)—(5). Pub. L. 87–703 designated existing provisions as subds. (3)—(5) and made phraseological changes.

1956—Act Aug. 7, 1956, required local organization to

[1] So in original. Probably should read "floodwater".

secure engineering and other services and to employ engineers, except in projects not providing for municipal or industrial water supplies, when the local organization may or may not employ engineers, provided for reimbursement of costs of engineers, authorized the Secretary to contract for engineers or to utilize engineers employed by the Federal Government when local organizations do not employ any, permitted advances, required transmittal of plans when Federal contributions to construction costs are more than $250,000 or the works include any structures with more than 2,500 acre-feet of total capacity, eliminated provisions which required transmittal 45 days prior to commencement of installation, and reduced the period for submission of plans to the Secretaries of the Interior and the Army from 60 days to 30 days prior to transmittal to Congress.

Act July 19, 1956, substituted "fifteen" for "forty-five."

§ 1006. Cooperative programs.

The Secretary is authorized in cooperation with other Federal and with States and local agencies to make investigations and surveys of the watersheds of rivers and other waterways as a basis for the development of coordinated programs. In areas where the programs of the Secretary of Agriculture may affect public or other lands under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture in the planning and development of works or programs for such lands. (Aug. 4, 1954, ch. 656, § 6, 68 Stat. 668.)

§ 1006a. Loans or advancements for financing local share of costs; repayment; interest; maximum amount.

The Secretary is authorized to make loans or advancements (a) to local organizations to finance the local share of costs of carrying out works of improvement provided for in this chapter, and (b) to State and local agencies to finance the local share of costs of carrying out works of improvement (as defined in section 1002 of this title) in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented: *Provided*, That the works of improvement in connection with said eleven watershed improvement programs shall be integral parts of watershed or subwatershed work plans agreed upon by the Secretary of Agriculture and the concerned State and local agencies. Such loans or advancements shall be made under contracts or agreements which will provide, under such terms and conditions as the Secretary deems appropriate, for the repayment thereof in not more than fifty years from the date when the principal benefits of the works of improvement first become available, with interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the loan or advancement is made, which are neither due nor callable for redemption for fifteen years from date of issue. With respect to any single plan for works of improvement, the amount of any such loan or advancement shall not exceed five million dollars. (Aug. 4, 1954, ch. 656, § 8, as added Aug. 7, 1956, ch. 1027, § 1(g), 70 Stat. 1090, and amended May 13, 1960, Pub. L. 86–468, § 1, 74 Stat. 131.)

AMENDMENTS

1960—Pub. L. 86–468 authorized the Secretary to make loans or advancements to state and local agencies to finance the local share of costs of carrying out works of improvement in connection with the 11 watershed improvement programs authorized by section 13 of the act of Dec. 22, 1944.

§ 1006b. Territorial application.

The provisions of this chapter shall be applicable to Hawaii, Alaska, Puerto Rico, and the Virgin Islands. (Aug. 4, 1954, ch. 656, § 9, as added Aug. 7, 1956, ch. 1027, § 1 (g), 70 Stat. 1090.)

PROJECTS AUTHORIZED BEFORE AUG. 7, 1956

Section as applicable to all works of improvement and plans for such works under the provisions of this chapter, see section 2 of act Aug. 7, 1956, set out as a note under section 1001 of this title.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 1007. Appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter, such sums to remain available until expended. No appropriation hereafter available for assisting local organizations in preparing and carrying out plans for works of improvement under the provisions of section 1003 of this title or clause (a) of section 1006a of this title shall be available for any works of improvement pursuant to this chapter or otherwise in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, or for making loans or advancements to State and local agencies as authorized by clause (b) of section 1006a of this title. (Aug. 4, 1954, ch. 656, § 10, formerly § 8, 68 Stat. 668, renumbered Aug. 7, 1956, ch. 1027, § 1(g), 70 Stat. 1090, and amended May 13, 1960, Pub. L. 86–468, § 3, 74 Stat. 132.)

AMENDMENTS

1960—Pub. L. 86–468 prohibited appropriations available for assisting local organizations in preparing and carrying out plans for works of improvement under sections 1003 and 1006a(a) of this title from being used for works of improvement in connection with the 11 watershed improvement programs authorized by section 13 of the act of Dec. 22, 1944, or for making loans or advancements to state and local agencies as authorized by section 1006a(b) of this title.

§ 1008. Notification of Secretary of Interior of approval of assistance; surveys and investigations; report and recommendations; consideration; cost of surveys, investigations and reports.

When the Secretary approves the furnishing of assistance to a local organization in preparing a plan for works of improvement as provided for in section 1003 of this title,

(1) The Secretary shall so notify the Secretary of the Interior in order that the latter, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement that is acceptable to the local organization and the Secretary of Agriculture.

(2) Full consideration shall be given to the recommendations contained in any such report of the Secretary of the Interior as he may submit to the Secretary of Agriculture prior to the time the local organization and the Secretary of Agriculture have agreed on a plan for works of improvement. The plan shall include such of the technically and economically feasible works of improvement for wildlife purposes recommended in the report by the Secretary of the Interior as are acceptable to, and agreed to by, the local organization and the Secretary of Agriculture, and such report of the Secretary of the Interior shall, if requested by the Secretary of the Interior, accompany the plan for works of improvement when it is submitted to the Secretary of Agriculture for approval or transmitted to the Congress through the President.

(3) The cost of making surveys and investigations and of preparing reports concerning the conservation and development of wildlife resources shall be borne by the Secretary of the Interior out of funds appropriated to his Department. (Aug. 4, 1954, ch. 656, § 12, as added Aug. 12, 1958, Pub. L. 85–624, § 3, 72 Stat. 567.)

§ 1009. Joint investigations and surveys by Secretary of the Army and Secretary of Agriculture; reports to Congress.

The Secretary of the Army and the Secretary of Agriculture, when authorized to do so by resolutions adopted by the Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives, are authorized and directed to make joint investigations and surveys in accordance with their existing authorities of watershed areas in the United States, Puerto Rico, and the Virgin Islands, and to prepare joint reports on such investigations and surveys setting forth their recommendations for the installation of the works of improvement needed for flood prevention or the conservation, development, utilization, and disposal of water, and for flood control and allied purposes. Such joint reports shall be submitted to the Congress through the President for adoption and authorization by the Congress of the recommended works of improvement: *Provided*, That the project authorization procedure established by this chapter shall not be affected. (Pub. L. 87–639, § 1, Sept. 5, 1962, 76 Stat. 438.)

8. Fish and Wildlife Conservation on Military Reservations

16 U.S.C. 670a–670o

§ 670a. Wildlife, fish, and game conservation; cooperative plan between Secretary of Defense, Secretary of Interior, and State agencies; permits; fees.

The Secretary of Defense is hereby authorized to carry out a program of planning, development, maintenance and coordination of wildlife, fish and game conservation and rehabilitation in military reservations in accordance with a cooperative plan mutually agreed upon by the Secretary of Defense, the Secretary of Interior and the appropriate State agency designated by the State in which the reservation is located. Such cooperative plan shall provide for (1) fish and wildlife habitat improvements or modifications, (2) range rehabilitation where necessary for support of wildlife, and (3) control of off-road vehicle traffic. Such cooperative plan may stipulate the issuance of special State hunting and fishing permits to individuals and require this payment of a nominal fee therefor, which fees shall be utilized for the protection, conservation and management of fish and wildlife, including habitat improvement and related activities in accordance with the cooperative plan: *Provided*, That the Commanding Officer of the reservation or persons designated by him are authorized to enforce such special hunting and fishing permits and to collect the fees therefor, acting as agent or agents for the State if the cooperative plan so provides. (Pub. L. 86–797, title I, § 101, formerly § 1, Sept. 15, 1960, 74 Stat. 1052, renumbered and amended Pub. L. 93–452, §§ 1(1), 3(1), (2), Oct. 18, 1974, 88 Stat. 1339, 1375.)

AMENDMENTS

1974—Pub. L. 93–452, §§ 1(1), 3(2), added provisions requiring the cooperative plan to provide for fish and wildlife habitat improvements, range rehabilitation, and off-road vehicle traffic control.

§ 670b. Migratory game birds; permits; fees; Stamp Act and State law requirements.

The Secretary of Defense in cooperation with the Secretary of the Interior and the appropriate State agency is authorized to carry out a program for the conservation, restoration and management of migratory game birds on military reservations, including the issuance of special hunting permits and the collection of fees therefor, in accordance with a cooperative plan mutually agreed upon by the Secretary of Defense, the Secretary of the Interior and the appropriate State agency: *Provided*, That possession of a special permit for hunting migratory game birds issued pursuant to this subchapter shall not relieve the permittee of the requirements of the

Migratory Bird Hunting Stamp Act as amended nor of the requirements pertaining to State law set forth in Public Law 85–337. (Pub. L. 86–797, title I, § 102, formerly § 2, Sept. 15, 1960, 74 Stat. 1053, renumbered and amended Pub. L. 93–452, § 39(1), (3), Oct. 18, 1974, 88 Stat. 1375.)

AMENDMENTS

1974—Pub. L. 93–452, § 3(3), substituted "title" for "Act" which for purposes of codification was translated as "subchapter".

§ 670c. Public outdoor recreation resources; cooperative plan between Secretary of Defense, Secretary of Interior, and State agencies.

The Secretary of Defense is also authorized to carry out a program for the development, enhancement, operation, and maintenance of public outdoor recreation resources at military reservations in accordance with a cooperative plan mutually agreed upon by the Secretary of Defense and the Secretary of the Interior, in consultation with the appropriate State agency designated by the State in which such reservations are located. (Pub. L. 86–797, § 3, Sept. 15, 1960, 74 Stat. 1053; Pub. L. 90–465, § 1, Aug. 8, 1968, 82 Stat. 661.)

AMENDMENTS

1968—Pub. L. 90–465 authorized the carrying out of a public outdoor recreation resources program under a cooperative plan between Secretary of Defense, Secretary of Interior, and State agencies, and eliminated former provisions for expenditure of funds collected and purposes therefor, now incorporated in section 670f(a) of this title.

§ 670d. Liability for funds; accounting to Comptroller General.

The Department of Defense is held free from any liability to pay into the Treasury of the United States upon the operation of the program or programs authorized by this subchapter any funds which may have been or may hereafter be collected, received or expended pursuant to, and for the purposes of, this subchapter, and which collections, receipts and expenditures have been properly accounted for to the Comptroller General of the United States. (Pub. L. 86–797, title I, § 104, formerly § 4, Sept. 15, 1960, 74 Stat. 1053, renumbered and amended Pub. L. 93–452, § 3 (1), (4), Oct. 18, 1974, 88 Stat. 1375.)

AMENDMENTS

1974—Pub. L. 93–452, § 3(4), substituted "title" for "Act" wherever appearing therein, which for purposes of codification was translated as "subchapter".

§ 670e. Applicability to other laws; national forest lands.

Nothing herein contained shall be construed to modify, amend or repeal any provision of Public Law 85–337, nor as applying to national forest lands administered pursuant to the provisions of section 9 of the Act of June 7, 1924 (43 Stat. 655), nor section 315m of Title 43. (Pub. L. 86–797, § 5, Sept. 15, 1960, 74 Stat. 1053.)

§ 670f. Expenditure of funds collected; purposes; authorization of appropriations; utilization of services of Secretary of Interior; availability of funds.

(a) The Secretary of Defense shall expend such funds as may be collected in accordance with the cooperative plans agreed to under sections 670a and 670b of this title and for no other purpose.

(b) There is also authorized to be appropriated to the Secretary of Defense not to exceed $500,000 per fiscal year for the fiscal years beginning July 1, 1969, July 1, 1970, and July 1, 1971, and not to exceed $1,500,000 for the fiscal year beginning July 1, 1972, and for each of the next five fiscal years thereafter, to carry out this subchapter, including the enhancement of fish and wildlife habitat and the development of public recreation and other facilities. The Secretary of Defense shall, to the greatest extent practicable, enter into agreements to utilize the services, personnel, equipment, and facilities, with or without reimbursement, of the Secretary of the Interior in carrying out the provisions of this subchapter. There is authorized to be appropriated to the Secretary of the Interior not to exceed $2,000,000 for the fiscal year beginning July 1, 1973, and for each of the next four fiscal years thereafter to enable the Secretary to carry out such functions and responsibilities as he may have under cooperative plans to which he is a party under this subchapter. Sums authorized to be appropriated under this subchapter shall be available until expended. (Pub. L. 86–797, title I, § 103, formerly § 6, as added Pub. L. 90–465, § 2, Aug. 8, 1968, 82 Stat. 661, and renumbered and amended Pub. L. 93–452, §§ 1(2), 3(1), (4), (5), Oct. 18, 1974, 88 Stat. 1369, 1375.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–452, § 3(5), substituted "sections 101 and 102" for "sections 1 and 2" which for purposes of codification was translated as "sections 670a and 670b", therefore requiring no change in text because of redesignation of former sections 1 and 2 of Pub. L. 86–797 by section 3(1) of Pub. L. 93–452.

Subsec. (b). Pub. L. 93–452, §§ 1(2), 3(4), added provisions authorizing appropriations of not to exceed $1,500,000 for the fiscal year beginning July 1, 1972, and for each of the next five fiscal years thereafter, and authorizing appropriations to the Secretary of Interior not to exceed $2,000,000 for the fiscal year beginning July 1, 1973, and for each of the next four fiscal years thereafter, and substituted "title" for "Act" wherever appearing therein, which for purposes of codification was translated as "subchapter".

§ 670g. Wildlife, fish, and game conservation and rehabilitation programs; cooperation between Secretary of Interior, Secretary of Agriculture, and State agencies in planning, etc., in accordance with comprehensive plans; scope and implementation of programs.

(a) The Secretary of the Interior and the Secretary of Agriculture shall each, in cooperation with the State agencies and in accordance with comprehensive plans developed pursuant to section 670h of this title, plan, develop, maintain, and coordinate programs for the conservation and rehabilitation of wildlife, fish, and game. Such conservation and rehabilitation programs shall include, but not be limited to, specific habitat improvement projects and related activities and adequate protection for species considered threatened or endangered.

(b) The Secretary of the Interior shall implement the conservation and rehabilitation programs re-

quired under subsection (a) of this section on public land under his jurisdiction. The Secretary of the Interior shall adopt, modify, and implement the conservation and rehabilitation programs required under subsection (a) of this section on public land under the jurisdiction of the Chairman, but only with the prior written approval of the Atomic Energy Commission, and on public land under the jurisdiction of the Administrator, but only with the prior written approval of the Administrator. The Secretary of Agriculture shall implement such conservation and rehabilitation programs on public land under his jurisdiction. (Pub. L. 86–797, title II, § 201, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1369.)

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

§ 670h. Comprehensive plans for conservation and rehabilitation programs.

(a) Development by Secretary of Interior and Secretary of Agriculture; consultation with State agencies; prior written approval of concerned Federal agencies.

(1) The Secretary of the Interior shall develop, in consultation with the State agencies, a comprehensive plan for conservation and rehabilitation programs to be implemented on public land under his jurisdiction and the Secretary of Agriculture shall do the same in connection with public land under his jurisdiction.

(2) The Secretary of the Interior shall develop, with the prior written approval of the Atomic Energy Commission, a comprehensive plan for conservation and rehabilitation programs to be implemented on public land under the jurisdiction of the Chairman and develop, with the prior written approval of the Administrator, a comprehensive plan for such programs to be implemented on public land under the jurisdiction of the Administrator. Each such plan shall be developed after the Secretary of the Interior makes, with the prior written approval of the Chairman or the Administrator, as the case may be, and in consultation with the State agencies, necessary studies and surveys of the land concerned to determine where conservation and rehabilitation programs are most needed.

(b) Development consistent with overall land use and management plans; hunting, trapping, and fishing authorized in accordance with applicable State laws and regulations.

Each comprehensive plan developed pursuant to this section shall be consistent with any overall land use and management plans for the lands involved. In any case in which hunting, trapping, or fishing (or any combination thereof) of resident fish and wildlife is to be permitted on public land under a comprehensive plan, such hunting, trapping, and fishing shall be conducted in accordance with applicable laws and regulations of the State in which such land is located.

(c) Cooperative agreements by State agencies for implementation of programs; modification; contents; hunting, trapping and fishing authorized in accordance with applicable State laws and regulations; regulations.

(1) Each State agency may enter into a cooperative agreement with—

(A) the Secretary of the Interior with respect to those conservation and rehabilitation programs to be implemented under this subchapter within the State on public land which is under his jurisdiction;

(B) the Secretary of Agriculture with respect to those conservation and rehabilitation programs to be implemented under this subchapter within the State on public land which is under his jurisdiction; and

(C) the Secretary of the Interior and the Chairman or the Administrator, as the case may be, with respect to those conservation and rehabilitation programs to be implemented under this subchapter within the State on public land under the jurisdiction of the Chairman or the Administrator; except that before entering into any cooperative agreement which affects public land under the jurisdiction of the Chairman, the Secretary of the Interior shall obtain the prior written approval of the Atomic Energy Commission and before entering into any cooperative agreement which affects public lands under the jurisdiction of the Administrator, the Secretary of the Interior shall obtain the prior written approval of the Administrator.

Conservation and rehabilitation programs developed and implemented pursuant to this subchapter shall be deemed as supplemental to wildlife, fish, and game-related programs conducted by the Secretary of the Interior and the Secretary of Agriculture pursuant to other provisions of law. Nothing in this subchapter shall be construed as limiting the authority of the Secretary of the Interior or the Secretary of Agriculture, as the case may be, to manage the national forests or other public lands for wildlife and fish and other purposes in accordance with the Multiple-Use Sustained-Yield Act of 1960 or other applicable authority.

(2) Any conservation and rehabilitation program included within a cooperative agreement entered into under this subsection may be modified in a manner mutually agreeable to the State agency and the Secretary concerned (and the Chairman or the Administrator, as the case may be, if public land under his jurisdiction is involved). Before modifying any cooperative agreement which affects public land under the jurisdiction of the Chairman, the Secretary of the Interior shall obtain the prior written approval of the Atomic Energy Commission and before modifying any cooperative agreement which affects public land under the jurisdiction of the Administrator, the Secretary of the Interior shall obtain the prior written approval of the Administrator.

(3) Each cooperative agreement entered into

under this subsection shall—

(A) specify those areas of public land within the State on which conservation and rehabilitation programs will be implemented;

(B) provide for fish and wildlife habitat improvements or modifications, or both;

(C) provide for range rehabilitation where necessary for support of wildlife;

(D) provide adequate protection for fish and wildlife officially classified as threatened or endangered pursuant to section 1533 of this title or considered to be threatened, rare, or endangered by the State agency;

(E) require the control of off-road vehicle traffic;

(F) if the issuance of public land area management stamps is agreed to pursuant to section 670i (a) of this title—

(i) contain such terms and conditions as are required under section 670i(b) of this title;

(ii) require the maintenance of accurate records and the filing of annual reports by the State agency to the Secretary of the Interior or the Secretary of Agriculture, or both, as the case may be, setting forth the amount and disposition of the fees collected for such stamps; and

(iii) authorize the Secretary concerned and the Comptroller General of the United States, or their authorized representatives, to have access to such records for purposes of audit and examination; and

(G) contain such other terms and conditions as the Secretary concerned and the State agency deem necessary and appropriate to carry out the purposes of this subchapter.

A cooperative agreement may also provide for arrangements under which the Secretary concerned may authorize officers and employees of the State agency to enforce, or to assist in the enforcement of, section 670j(a) of this title.

(4) Except where limited under a comprehensive plan or pursuant to cooperate agreement, hunting, fishing, and trapping shall be permitted with respect to resident fish and wildlife in accordance with applicable laws and regulations of the State in which such land is located on public land which is the subject of a conservation and rehabilitation program implemented under this subchapter.

(5) The Secretary of the Interior and the Secretary of Agriculture, as the case may be, shall prescribe such regulations as are deemed necessary to control, in a manner consistent with the applicable comprehensive plan and cooperative agreement, the public use of public land which is the subject of any conservation and rehabilitation program implemented by him under this subchapter. (Pub. L. 86–797, title II, § 202, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1369.)

REFERENCES IN TEXT

Multiple-Use Sustained-Yield Act of 1960, referred to in subsec. (c), is classified to sections 528 to 531 of this title.

§ 670i. Public land management area stamps; agreement between State agencies and Secretary of Interior and Secretary of Agriculture requiring stamps for hunting, trapping, and fishing on public lands subject to programs; conditions of agreement.

(a) Any State agency may agree with the Secretary of the Interior and the Secretary of Agriculture (or with the Secretary of the Interior or the Secretary of Agriculture, as the case may be, if within the State concerned all conservation and rehabilitation programs under this subchapter will be implemented by him) that no individual will be permitted to hunt, trap, or fish on any public land within the State which is subject to a conservation and rehabilitation program implemented under this subchapter unless at the time such individual is engaged in such activity he has on his person a valid public land management area stamp issued pursuant to this section.

(b) Any agreement made pursuant to subsection (a) of this section to require the issuance of public land management area stamps shall be subject to the following conditions:

(1) Such stamps shall be issued, sold, and the fees therefor collected, by the State agency or by the authorized agents of such agency.

(2) Notice of the requirement to possess such stamps shall be displayed prominently in all places where State hunting, trapping, or fishing licenses are sold. To the maximum extent practicable, the sale of such stamps shall be combined with the sale of such State hunting, trapping, and fishing licenses.

(3) Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this subchapter in the State concerned and for no other purpose. If such programs are implemented by both the Secretary of the Interior and the Secretary of Agriculture in the State, the Secretaries shall mutually agree, on such basis as they deem reasonable, on the proportion of such fees that shall be applied by the State agency to their respective programs.

(4) The purchase of any such stamp shall entitle the purchaser thereof to hunt, trap, and fish on any public land within such State which is the subject of a conservation or rehabilitation program implemented under this subchapter except to the extent that the public use of such land is limited pursuant to a comprehensive plan or cooperative agreement; but the purchase of any such stamp shall not be construed as (A) eliminating the requirement for the purchase of a migratory bird hunting stamp as set forth in section 718a of this title, or (B) relieving the purchaser from compliance with any applicable State game and fish laws and regulations.

(5) The amount of the fee to be charged for such stamps, the age at which the individual is required to acquire such a stamp, and the expira-

tion date for such stamps shall be mutually agreed upon by the State agency and the Secretary or Secretaries concerned; except that each such stamp shall be void not later than one year after the date of issuance.

(6) Each such stamp must be validated by the purchaser thereof by signing his name across the face of the stamp.

(7) Any individual to whom a stamp is sold pursuant to this section shall upon request exhibit such stamp for inspection to any officer or employee of the Department of the Interior or the Department of Agriculture, or to any other person who is authorized to enforce section 670j(a) of this title.

(Pub. L. 86–797, title II, § 203, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1371.)

§ 670j. Enforcement provisions.

(a) Violations and penalties.

(1) Any person who hunts, traps, or fishes on any public land which is subject to a conservation and rehabilitation program implemented under this subchapter without having on his person a valid public land management area stamp, if the possession of such a stamp is required, shall be fined not more than $1,000, or imprisoned for not more than six months, or both.

(2) Any person who knowingly violates or fails to comply with any regulations prescribed under section 670h(c)(5) of this title shall be fined not more than $500, or imprisoned not more than six months, or both.

(b) Designation of enforcement personnel; powers; issuance of arrest warrants; trial and sentencing by United States magistrates.

(1) For the purpose of enforcing subsection (a) of this section, the Secretary of the Interior and the Secretary of Agriculture may designate any employee of their respective departments, and any State officer or employee authorized under a cooperative agreement to enforce subsection (a) of this section, to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view; (iv) search without warrant or process any person, place, or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.

(2) Upon the sworn information by a competent person, any United States magistrate or court of competent jurisdiction may issue process for the arrest of any person charged with committing any offense under subsection (a) of this section.

(3) Any person charged with committing any offense under subsection (a) of this section may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401 of Title 18.

(c) Seizure and forfeiture of equipment and vessels.

All guns, traps, nets, and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in committing an offense under subsection (a) of this section shall be subject to forfeiture to the United States and may be seized and held pending the prosecution of any person arrested for committing such offense. Upon conviction for such offense, such forfeiture may be adjudicated as a penalty in addition to any other provided for committing such offense.

(d) Applicability of customs laws to seizures and forfeitures; exceptions.

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for the purposes of this section, be exercised or performed by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, or by such persons as he may designate. (Pub. L. 86–797, title II, § 204, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1372.)

§ 670k. Definitions.

As used in this subchapter—

(1) The term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

(2) The term "Chairman" means the Chairman of the Atomic Energy Commission.

(3) The term "off-road vehicle" means any motorized vehicle designed for, or capable of, cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; but such term does not include—

(A) any registered motorboat at the option of each State;

(B) any military, fire, emergency, or law enforcement vehicle when used for emergency purposes; and

(C) any vehicle the use of which is expressly authorized by the Secretary of the Interior or the Secretary of Agriculture under a permit, lease, license, or contract.

(4) The term "public land" means all lands, under the respective jurisdiction of the Secretary of the Interior, the Secretary of Agriculture, the Chairman, and the Administrator, except land which is, or hereafter may be, within or designated as—

(A) a military reservation;

(B) a unit of the National Park System;

(C) an area within the national wildlife refuge system;

(D) an Indian reservation; or

(E) an area within an Indian reservation or land held in trust by the United States for an Indian or Indian tribe.

(5) The term "State agency" means the agency or agencies of a State responsible for the administration of the fish and game laws of the State.

(6) The term "conservation and rehabilitation programs" means to utilize those methods and procedures which are necessary to protect, conserve, and enhance wildlife, fish, and game resources to the maximum extent practicable on public lands subject to this subchapter consistent with any overall land use and management plans for the lands involved. Such methods and procedures shall include, but shall not be limited to, all activities associated with scientific resources management such as protection, research, census, law enfrocement, habitat management, propagation, live trapping and transplantation, and regulated taking in conformance with the provisions of this subchapter. Nothing in this term shall be construed as diminishing the authority or jurisdiction of the States with respect to the management of resident species of fish, wildlife, or game, except as otherwise provided by law.

(Pub. L. 86–797, title II, § 205, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1373.)

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions, by Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233. See sections 5814 of Title 42, The Public Health and Welfare.

§ 670*l*. Applicability to Forest Service and Bureau of Land Management lands of public land management area stamp requirements; authorized fees.

Notwithstanding any other provision in this subchapter, section 670i of this title shall not apply to land which is, or hereafter may be, within or designated as Forest Service land or as Bureau of Land Management land of any State in which all Federal lands therein comprise 60 percent or more of the total area of such State; except that in any such State, any appropriate State agency may agree with the Secretary of Agriculture or the Secretary of the Interior, or both, as the case may be, to collect a fee as specified in such agreement at the point of sale of regular licenses to hunt, trap, or fish in such State, the proceeds of which shall be utilized in carrying out conservation and rehabilitation programs implemented under this subchapter in the State concerned and for no other purpose. (Pub. L. 86–797, title II, § 206, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1374.)

§ 670*m*. Indian rights unaffected; State or Federal jurisdiction regulating Indian rights preserved.

Nothing in this subchapter shall enlarge or diminish or in any way affect (1) the rights of Indians or Indian tribes to the use of water or natural resources or their rights to fish, trap, or hunt wildlife as secured by statue, agreement, treaty, Executive order, or court decree; or (2) existing State or Federal jurisdiction to regulate those rights either on or off reservations. (Pub. L. 86–797, title II, § 207, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1374.)

§ 670*n*. Joint Federal-State Land Use Planning Commission for Alaska jurisdiction, authority, etc., unaffected; submission of views by Commission.

Nothing in this chapter shall in any way affect the jurisdiction, authority, duties, or activities of the Joint Federal-State Land Use Planning Commission established pursuant to section 1616 of Title 43. During the development of any cooperative plan for Alaska which may be agreed to under subchapter I of this chapter after the effective date of this section and of any comprehensive program for Alaska under this subchapter, such Commission shall be given an opportunity to submit its comments on such plan or program. (Pub. L. 86–797, title II, § 208, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1374.)

§ 670*o*. Authorization of appropriations.

(a) There is authorized to be appropriated the sum of $10,000,000 for the fiscal year ending June 30, 1974, and for each of the next four fiscal years thereafter to enable the Department of the Interior to carry out its functions and responsibilities under this subchapter.

(b) There is authorized to be appropriated the sum of $10,000,000 for the fiscal year ending June 30, 1974, and for each of the next four fiscal years thereafter to enable the Department of Agriculture to carry out its functions and responsibilities under this subchapter. (Pub. L. 86–797, title II, § 209, as added Pub. L. 93–452, § 2, Oct. 18, 1974, 88 Stat. 1374.)

9. Fish and Wildlife Coordination

16 U.S.C. 661–667e

Sec.

§ 661. Declaration of purpose; cooperation of agencies; surveys and investigations; donations.

For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation for the purposes of sections 661 to 666c of this title in the United States, its Territories and possessions, the Secretary of the Interior is authorized (1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas, including easements across public lands for access thereto, and in carrying out other measures necessary to effectuate the purposes of said sections; (2) to make surveys and investigations of the wildlife of the public domain, including lands and waters or interests therein acquired or controlled by any agency of the United States; and (3) to accept donations of land and contributions of funds in furtherance of the purposes of said sections. (Mar. 10, 1934, ch. 55, § 1, 48 Stat. 401; 1939 Reorg. Plan No. II, § 4 (e), (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; Aug. 14, 1946, ch. 965, 60 Stat. 1080; Aug. 12, 1958, Pub. L. 85–624, § 2, 72 Stat. 563.)

AMENDMENTS

1958—Pub. L. 85–624 inserted provisions which relate to recognition of the vital contribution of wildlife resources to the Nation, the increasing public interest and significance thereof, and to equal consideration and coordination of wildlife conservation with other water-resources development programs, and which authorize the Secretary to provide public fishing areas, and to accept donations of lands and contributions of funds.

1946—Act Aug. 14, 1946, amended section generally in order to promote more effectual planning and cooperation between Federal, State, public, and private agencies for the conservation and rehabilitation of wildlife.

§ 662. Impounding, diverting, or controlling of waters.

(a) Consultations between agencies.

Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.

(b) Reports and recommendations; consideration.

In furtherance of such purposes, the reports and recommendations of the Secretary of the Interior on the wildlife aspects of such projects, and any report of the head of the State agency exercising administration over the wildlife resources of the State, based on surveys and investigations conducted by the United States Fish and Wildlife Service and such State agency for the purpose of determining the possible damage to wildlife resources and for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources, shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to the Congress or to any agency or person having the authority or the power, by administrative action or otherwise, (1) to authorize the construction of water-resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects, to which sections 661 to 666c of this title apply. Recommendations of the Secretary of the Interior shall be as specific as is practicable with respect to features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected, and shall describe the damage to wildlife attributable to the project and the measures proposed for

mitigating or compensating for these damages. The reporting officers in project reports of the Federal agencies shall give full consideration to the report and recommendations of the Secretary of the Interior and to any report of the State agency on the wildlife aspects of such projects, and the project plan shall include such justifiable means and measures for wildlife purposes as the reporting agency finds should be adopted to obtain maximum overall project benefits.

(c) Modification of projects; acquisition of lands.

Federal agencies authorized to construct or operate water-control projects are authorized to modify or add to the structures and operations of such projects, the construction of which has not been substantially completed on the date of enactment of the Fish and Wildlife Coordination Act, and to acquire lands in accordance with section 663 of this title, in order to accommodate the means and measures for such conservation of wildlife resources as an integral part of such projects: *Provided*, That for projects authorized by a specific Act of Congress before the date of enactment of the Fish and Wildlife Coordination Act (1) such modification or land acquisition shall be compatible with the purposes for which the project was authorized; (2) the cost of such modifications or land acquisition, as means and measures to prevent loss of and damage to wildlife resources to the extent justifiable, shall be an integral part of the cost of such projects; and (3) the cost of such modifications or land acquisition for the development or improvement of wildlife resources may be included to the extent justifiable, and an appropriate share of the cost of any project may be allocated for this purpose with a finding as to the part of such allocated cost, if any, to be reimbursed by non-Federal interests.

(d) Project costs.

The cost of planning for and the construction or installation and maintenance of such means and measures adopted to carry out the conservation purposes of this section shall constitute an integral part of the cost of such projects: *Provided*, That such cost attributable to the development and improvement of wildlife shall not extend beyond that necessary for (1) land acquisition, (2) facilities as specifically recommended in water resource project reports, (3) modification of the project, and (4) modification of project operations, but shall not include the operation of wildlife facilities.

(e) Transfer of funds.

In the case of construction by a Federal agency, that agency is authorized to transfer to the United States Fish and Wildlife Service, out of appropriations or other funds made available for investigations, engineering, or construction, such funds as may be necessary to conduct all or part of the investigations required to carry out the purposes of this section.

(f) Estimation of wildlife benefits or losses.

In addition to other requirements, there shall be included in any report submitted to Congress supporting a recommendation for authorization of any new project for the control or use of water as described herein (including any new division of such project or new supplemental works on such project) an estimation of the wildlife benefits or losses to be derived therefrom including benefits to be derived from measures recommended specifically for the development and improvement of wildlife resources, the cost of providing wildlife benefits (including the cost of additional facilities to be installed or lands to be acquired specifically for that particular phase of wildlife conservation relating to the development and improvement of wildlife), the part of the cost of joint-use facilities allocated to wildlife, and the part of such costs, if any, to be reimbursed by non-Federal interests.

(g) Applicability to projects.

The provisions of this section shall be applicable with respect to any project for the control or use of water as prescribed herein, or any unit of such project authorized before or after the date of enactment of the Fish and Wildlife Coordination Act for planning or construction, but shall not be applicable to any project or unit thereof authorized before the date of enactment of the Fish and Wildlife Coordination Act if the construction of the particular project or unit thereof has been substantially completed. A project or unit thereof shall be considered to be substantially completed when sixty percent or more of the estimated construction cost has been obligated for expenditure.

(h) Exempt projects and activities.

The provisions of section 661 to 666c of this title shall not be applicable to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction. (Mar. 10, 1934, ch. 55, § 2, 48 Stat. 401; 1939 Reorg. Plan No. II, § 4 (e), (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; Aug. 14, 1946, ch. 965, 60 Stat. 1080; Aug. 12, 1958, Pub. L. 85–624, § 2, 72 Stat. 564; July 9, 1965, Pub. L. 89–72, § 6(b), 79 Stat. 216.)

AMENDMENTS

1965—Subsec. (d). Pub. L. 89–72 added clause (2) to proviso, redesignated clauses (2) and (3) thereof as (3) and (4), deleted therefrom "nor the construction of such facilities beyond those herein described" following "wildlife facilities" and deleted a second proviso which applied to projects constructed under Federal reclamation laws and required the Secretary of Interior, in addition to allocations made under section 485h of Title 43, to make findings on part of estimated cost of the project which can properly be allocated to means and measures to prevent loss and damage to wildlife resources, which costs shall not be reimbursable, and provided for allocation of project costs to development and improvement of wildlife resources, now covered by sections 460*l*–12 to 460*l*–21 of this title.

1958—Pub. L. 85–624 amended section generally to require consultations with a view to the conservation of resources by providing for the development and improvement thereof in connection with water-resource development, to provide for inclusion of reports and recommendations of the Secretary of the Interior and of the heads of State agencies in reports prepared or submitted by agencies responsible for engineering surveys and construction of projects when such reports are presented to the Congress or to any agency or person having the authority or

the power to authorize the construction of water-resource development projects or to approve a report on the modification or supplementation of plans for previously authorized projects, to authorize modification of projects and acquisition of lands, and to require an estimation of benefits or losses to wildlife to be incorporated in the reports submitted to the Congress.

1946—Act Aug. 14, 1946, amended section generally to provide for consultations between any agencies and the Fish and Wildlife Service and head of State agency exercising administration over State wildlife resources prior to the impounding of water in order to prevent loss and damage to wildlife resources. Former provisions of this section are covered by section 665 of this title.

§ 663. Same.

(a) Conservation, maintenance, and management of wildlife resources; development and improvement.

Subject to the exceptions prescribed in section 662 (h) of this title, whenever the waters of any stream or other body of water are impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, adequate provision, consistent with the primary purposes of such impoundment, diversion, or other control, shall be made for the use thereof, together with any areas of land, water, or interests therein, acquired or administered by a Federal agency in connection therewith, for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon, including the development and improvement of such wildlife resources pursuant to the provisions of section 662 of this title.

(b) Use and availability of waters, land, or interests therein.

The use of such waters, land, or interests therein for wildlife conservation purposes shall be in accordance with general plans approved jointly (1) by the head of the particular department or agency exercising primary administration in each instance, (2) by the Secretary of the Interior, and (3) by the head of the agency exercising the administration of the wildlife resources of the particular State wherein the waters and areas lie. Such waters and other interests shall be made available, without cost for administration, by such State agency, if the management of the properties relate to the conservation of wildlife other than migratory birds, or by the Secretary of the Interior, for administration in such manner as he may deem advisable, where the particular properties have value in carrying out the national migratory bird management program: *Provided,* That nothing in this section shall be construed as affecting the authority of the Secretary of Agriculture to cooperate with the States or in making lands available to the States with respect to the management of wildlife and wildlife habitat on lands administered by him.

(c) Acquisition of land, waters, and interests therein; report to the Congress.

When consistent with the purposes of sections 661 to 666c of this title and the reports and findings of the Secretary of the Interior prepared in accordance with section 662 of this title, land, waters, and interests therein may be acquired by Federal construction agencies for the wildlife conservation and development purposes of sections 661 to 666c of this title in connection with a project as reasonably needed to preserve and assure for the public benefit the wildlife potentials of the particular project area: *Provided,* That before properties are acquired for this purpose, the probable extent of such acquisition shall be set forth, along with other data necessary for project authorization, in a report submitted to the Congress, or in the case of a project previously authorized, no such properties shall be acquired unless specifically authorized by Congress, if specific authority for such acquisition is recommended by the construction agency.

(d) Use of acquired properties.

Properties acquired for the purposes of this section shall continue to be used for such purposes, and shall not become the subject of exchange or other transactions if such exchange or other transaction would defeat the initial purpose of their acquisition.

(e) Availability of Federal lands acquired or withdrawn for Federal water-resource purposes.

Federal lands acquired or withdrawn for Federal water-resource purposes and made available to the States or to the Secretary of the Interior for wildlife management purposes, shall be made available for such purposes in accordance with sections 661 to 666c of this title, notwithstanding other provisions of law.

(f) National forest lands.

Any lands acquired pursuant to this section by any Federal agency within the exterior boundaries of a national forest shall, upon acquisition, be added to and become national forest lands, and shall be administered as a part of the forest within which they are situated, subject to all laws applicable to lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961), unless such lands are acquired to carry out the National Migratory Bird Management Program. (Mar. 10, 1934, ch. 55, § 3, 48 Stat. 401; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232; Aug. 14, 1946, ch. 965, 60 Stat. 1080; Aug. 12, 1958, Pub. L. 85–624, § 2, 72 Stat. 566.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–624 designated first sentence of existing provisions as subsec. (a), and, among other changes, inserted "Subject to the exceptions prescribed in section 662(h) of this title" preceding "whenever the waters", substituted "diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage" for "diverted, or otherwise controlled for any purpose whatever", and inserted provisions requiring adequate provision to be made for the development and improvement of wildlife resources pursuant to the provisions of section 662 of this title.

Subsec. (b). Pub. L. 85–624 designated second sentence of existing provisions as subsec. (b), included the use of land for wildlife conservation purpose, and provided that nothing in this section shall be construed as effecting the authority of the Secretary of Agriculture to cooperate with the States or in making lands available to the States with respect to the management of wildlife and wildlife habitat on lands administered by him.

Subsecs. (c)—(f). Pub. L. 85–624 added subsecs. (c)—(f).

1946—Act Aug. 14, 1946, amended section generally to provide for the conservation and maintenance of wildlife resources upon the impounding of waters, and to provide for the free use of the waters under certain conditions.

§ 664. Administration; rules and regulations; availability of lands to State agencies.

Such areas as are made available to the Secretary of the Interior for the purposes of sections 661 to 666c of this title, pursuant to sections 661 and 663 of this title or pursuant to any other authorization, shall be administered by him directly or in accordance with cooperative agreements entered into pursuant to the provisions of section 661 of this title and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon, as may be adopted by the Secretary in accordance with general plans approved jointly by the Secretary of the Interior and the head of the department or agency exercising primary administration of such areas: *Provided*, That such rules and regulations shall not be inconsistent with the laws for the protection of fish and game of the States in which such area is situated: *Provided further*, That lands having value to the National Migratory Bird Management Program may, pursuant to general plans, be made available without cost directly to the State agency having control over wildlife resources, if it is jointly determined by the Secretary of the Interior and such State agency that this would be in the public interest: *And provided further*, That the Secretary of the Interior shall have the right to assume the management and administration of such lands in behalf of the National Migratory Bird Management Program if the Secretary finds that the State agency has withdrawn from or otherwise relinquished such management and administration. (Mar. 10, 1934, ch. 55, § 4, 48 Stat. 402; 1939 Reorg. Plan No. II, § 4 (e), (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232; Aug. 14, 1946, ch. 965, 60 Stat. 1080; Aug. 12, 1958, Pub. L. 85–624, § 2, 72 Stat. 567.)

AMENDMENTS

1958—Pub. L. 85–624 permitted lands having value to the National Bird Management Program to be made available directly to the State agency having control over wildlife resources.

1946—Act Aug. 14, 1946, amended section generally to provide for administration of wildlife areas, and for the promulgation of rules and regulations.

§ 665. Investigations as to effect of sewage, industrial wastes; reports.

The Secretary of the Interior, through the Fish and Wildlife Service and the Bureau of Mines, is authorized to make such investigations as he deems necessary to determine the effects of domestic sewage, mine, petroleum, and industrial wastes, erosion silt, and other polluting substances on wildlife, and to make reports to the Congress concerning such investigations and of recommendations for alleviating dangerous and undesirable effects of such pollution. These investigations shall include (1) the determination of standards of water quality for the maintenance of wildlife; (2) the study of methods of abating and preventing pollution, including methods for the recovery of useful or marketable products and byproducts of wastes; and (3) the collation and distribution of data on the progress and results of such investigations for the use of Federal, State, municipal, and private agencies, individuals, organizations, or enterprises. (Mar. 10, 1934, ch. 55, § 5, 48 Stat. 402; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232; Aug. 14, 1946, ch. 965, 60 Stat. 1080.)

AMENDMENTS

1946—Act Aug. 14, 1946, amended section generally to provide for investigations as to the effect of sewage and industrial waste on wildlife.

§ 665a. Maintenance of adequate water levels in upper Mississippi River.

In the management of existing facilities (including locks, dams, and pools) in the Mississippi River between Rock Island, Illinois, and Minneapolis, Minnesota, administered by the United States Corps of Engineers of the Department of the Army, that Department is directed to give full consideration and recognition to the needs of fish and other wildlife resources and their habitat dependent on such waters, without increasing additional liability to the Government, and, to the maximum extent possible without causing damage to levee and drainage districts, adjacent railroads and highways, farm lands, and dam structures, shall generally operate and maintain pool levels as though navigation was carried on throughout the year. (Mar. 10, 1934, ch. 55, § 5A, as added June 19, 1948, ch. 528, 62 Stat. 497.)

§ 666. Appropriations.

There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions of sections 661 to 666c of this title and regulations made pursuant thereto, including the construction of such facilities, buildings, and other improvements necessary for economical administration of areas made available to the Secretary of the Interior under said sections, and the employment in the city of Washington and elsewhere of such persons and means as the Secretary of the Interior may deem necessary for such purposes. (Mar. 10 1934, ch. 55, § 6, 48 Stat. 402; Aug. 14, 1946, ch. 965, 60 Stat. 1080.)

AMENDMENTS

1946—Act Aug. 14, 1946, amended section generally to provide for the necessary appropriations to carry out the purposes of sections 661 to 666c of this title.

§ 666a. Penalties.

Any person who shall violate any rule or regulation promulgated in accordance with sections 661 to 666c of this title shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or imprisoned for not more than one year, or both. (Mar. 10, 1946, ch. 55, § 7, as added Aug. 14, 1946, ch. 965, 60 Stat. 1080.)

§ 666b. Definitions.

The terms "wildlife" and "wildlife resources" as used in sections 661 to 666c of this title include birds,

fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent. (Mar. 10, 1934, ch. 55, § 8, as added Aug. 14, 1946, ch. 965, 60 Stat. 1080.)

§ 666c. Applicability to Tennessee Valley Authority.

The provisions of sections 661 to 666b of this title shall not apply to the Tennessee Valley Authority. (Mar. 10, 1934, ch. 55, § 9, as added Aug. 14, 1946, ch. 965, 60 Stat. 1080.)

§ 666d. Skagit National Wildlife Refuge; exchange of lands.

The Secretary of the Interior is authorized, in his discretion, at any time within ten years from October 6, 1949, to accept from the State of Washington on behalf of the United States title to any lands in the State of Washington which he deems chiefly valuable for wildlife refuge purposes, and which are equivalent in value to the lands of the United States within the Skagit National Wildlife Refuge, and in exchange therefor to convey by deed on behalf of the United States to the State of Washington the said lands of the United States in the Skagit National Wildlife Refuge. (Oct. 6, 1949, ch. 619, § 1, 63 Stat. 708.)

§ 666e. Same; administration of lands.

Any lands acquired by the Secretary of the Interior under the terms of this section and section 666d of this title, if located within or adjacent to an existing wildlife refuge or reservation, immediately shall become a part of such refuge or reservation and shall be administered under the laws and regulations applicable thereto, and, if not so located, may be administered as a migratory-waterfowl management area, refuge, reservation, or breeding ground in accordance with the provisions of sections 661 to 666c of this title, and Acts supplementary thereto. (Oct. 6, 1949, ch. 619, § 2, 63 Stat. 708.)

§ 666f. Wildlife conservation and agricultural, industrial, recreational, and related uses for certain Federal lands; transfer of lands to Secretary of Interior; administration, development, and disposition.

In order to promote the orderly development and use of the lands and interests therein acquired by the United States in connection with the Crab Orchard Creek project and the Illinois Ordnance Plant in Williamson, Jackson, and Union Counties, Illinois, consistent with the needs of agriculture, industry, recreation, and wildlife conservation, all of the interests of the United States in and to such lands are hereby transferred to the Secretary of the Interior for administration, development, and disposition, in accordance with the provisions of this section and section 666g of this title. (Aug. 5, 1947, ch. 489, § 1, 61 Stat. 770.)

§ 666g. Same; classification of lands; industrial leases; administration; jurisdiction of Federal agencies.

All of the lands transferred to the Secretary of the Interior, pursuant to the provisions of section 666f of this title and this section, first shall be classified by him with a view to determining, in cooperation with Federal, State, and public or private agencies and organizations, the most beneficial use that may be made thereof to carry out the purposes of section 666f of this title and this section, including the development of wildlife conservation, agricultural, recreational, industrial, and related purposes. Such lands as have been or may hereafter be determined to be chiefly valuable for industrial purposes shall be leased for such purposes at such times and under such terms and conditions as are consistent with the general purposes of section 2 of the Surplus Property Act of 1944, as amended, and with the purposes of section 666f of this title and this section. Except to the extent otherwise provided in section 666f of this title and this section, all lands herein transferred shall be administered by the Secretary of the Interior through the Fish and Wildlife Service in accordance with the provisions of sections 661 to 666c of this title, and Acts supplementary thereto and amendatory thereof for the conservation of wildlife, and for the development of the agricultural, recreational, industrial, and related purposes specified in section 666f of this title and this section: *Provided,* That no jurisdiction shall be exercised by the Secretary of the Interior over that portion of such lands and the improvements thereon which are now utilized by the War Department directly or indirectly until such time as it is determined by the Secretary of War that utilization of such portions of such lands and the improvements thereon directly or indirectly by the War Department is no longer required: *Provided further,* That, subsequent to the determination referred to in the preceding proviso, the lands and improvements mentioned therein shall be administered by the Secretary of the Interior, and any lease or other disposition thereof shall be made subject to such terms, conditions, restrictions, and reservations imposed by the Secretary of War as will, in the opinion of the Secretary of War, be adequate to assure the continued availability for war production purposes of such lands and improvements. (Aug. 5, 1947, ch. 489, § 2, 61 Stat. 770.)

§ 667. Game management supply depots; appropriations.

Appropriations made for the administration, protection, maintenance, control, improvements, and development of wildlife sanctuaries, reservations, and refuges under the control of the Secretary of the Interior shall be available for the purchase, transportation, and handling of supplies and materials for distribution at cost from game management supply depots maintained by the Department of the Interior to projects specially provided for, and transfers between the appropriations for said purposes are authorized in order that the cost of supplies and materials, and transportation and handling thereof, drawn from central warehouses so maintained may be charged to the particular project benefited; and such supplies and materials as remain in said depots at the end of any fiscal year shall be continuously available for issuance during subsequent fiscal years and to be charged

for by such transfers of funds between said appropriations for the fiscal year then current without decreasing in any way the appropriations made for that fiscal year: *Provided*, That supplies and materials shall not be purchased solely for the purpose of increasing the value of storehouse stock beyond reasonable requirements for any current fiscal year. (June 24, 1936, ch. 764, 49 Stat. 1913; 1939 Reorg. Plan No. II, § 4 (e), (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 667a. State compacts for regulation of fishing in territorial or inland waters.

The consent of Congress is given to any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida, to enter into compacts or agreements, not in conflict with any law of the United States, for cooperative effort and mutual assistance for the uniform, common, or mutual regulation of fishing or of any species of fish, mollusks, or crustacea in the territorial waters and bays and inlets of the Atlantic Ocean on which such States border or to which their jurisdiction otherwise extends and of anadromous fish spawning in the inland waters of those States.

The consent of Congress is granted to States other than those specified but which have jurisdiction over inland waters frequented by anadromous fish of the sea to enter into compacts or agreements authorized by this section.

The consent of Congress is given to any of the aforementioned States to establish such agencies or authorities, joint or otherwise, as they may deem desirable for making effective compacts or agreements authorized in this section.

Any such compact or agreement shall not be binding or obligatory upon the signatory States unless it has been approved by the legislatures of such States and by the Congress of the United States. (June 8, 1940, ch. 295, §§ 1—4, 54 Stat. 261.)

§ 667b. Transfer of certain real property for wildlife conservation purposes; reservation of rights.

Upon request, real property which is under the jurisdiction or control of a Federal agency and no longer required by such agency, (1) can be utilized for wildlife conservation purposes by the agency of the State exercising administration over the wildlife resources of the State wherein the real property lies or by the Secretary of the Interior; and (2) is valuable for use for any such purpose, and which, in the determination of the Administrator of General Services, is available for such use may, notwithstanding any other provisions of law, be transferred without reimbursement or transfer of funds (with or without improvements as determined by said Administrator) by the Federal agency having jurisdiction or control of the property to (a) such State agency if the management thereof for the conservation of wildlife relates to other than migratory birds, or (b) to the Secretary of the Interior if the real property has particular value in carrying out the national migratory bird management program. Any such transfer to other than the United States shall be subject to the reservation by the United States of all oil, gas, and mineral rights, and to the condition that the property shall continue to be used for wildlife conservation or other of the above-stated purposes and in the event it is no longer used for such purposes or in the event it is needed for national defense purposes title thereto shall revert to the United States. (As amended Sept. 26, 1972, Pub. L. 92–432, 86 Stat. 723.)

AMENDMENTS

1972—Pub. L. 92–432 substituted "is valuable for use for any such purpose" for "is chiefly valuable for use for any such purpose" in cl. (2) of the first sentence.

§ 667c. Same; publication of designating order.

Whenever any real property is transferred pursuant to sections 667b to 667d of this title, the Administrator of General Services shall make and have published in the Federal Register an appropriate order, which may be revised from time to time in like manner, designating for which of the purposes specified in section 667b of this title the property so transferred shall be used. (May 19, 1948, ch. 310, § 2, 62 Stat. 241; June 30, 1949, ch. 288, title I, § 105, 63 Stat. 381.)

§ 667d. Same; reports to Congress.

A statement of the acreage and value of such property as may have been transferred pursuant to sections 667b to 667d of this title during the preceding fiscal year shall be annually prepared by the Administrator of General Services and shall be included in the annual budget transmitted to the Congress. (May 19, 1948, ch. 310, § 3, 62 Stat. 241; June 30, 1949, ch. 288, title I, § 105, 63 Stat. 381.)

§ 667e. Dead bodies of game animals or game or song birds, subject to laws of State.

All dead bodies, or parts thereof, of any foreign game animals, or game or song birds the importation of which is prohibited, or the dead bodies, or parts thereof, of any wild game animals or game or song birds transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such animals or birds had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. (May 25, 1900, ch. 553, § 5, 31 Stat. 188.)

10. Fish and Wildlife Service

16 U.S.C. 742(a)–754

Sec.
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§§ 741, 742. Omitted.

§ 742a. Declaration of policy.

The Congress declares that the fish, shellfish, and wildlife resources of the Nation make a material contribution to our national economy and food supply, as well as a material contribution to the health, recreation, and well-being of our citizens; that such resources are a living, renewable form of national wealth that is capable of being maintained and greatly increased with proper management, but equally capable of destruction if neglected or unwisely exploited; that such resources afford outdoor recreation throughout the Nation and provide employment, directly or indirectly, to a substantial number of citizens; that the fishing industries strengthen the defense of the United States through the provision of a trained seafaring citizenry and action-ready fleets of seaworthy vessels; that the training and sport afforded by fish and wildlife resources strengthen the national defense by contributing to the general health and physical fitness of millions of citizens; and that properly developed, such fish and wildlife resources are capable of steadily increasing these valuable contributions to the life of the Nation.

The Congress further declares that the fishing industry, in its several branches, can prosper and thus fulfill its proper function in national life only if certain fundamental needs are satisfied by means that are consistent with the public interest and in accord with constitutional functions of governments. Among these needs are:

(1) Freedom of enterprise—freedom to develop new areas, methods, products, and markets in accordance with sound economic principles, as well as freedom from unnecessary administrative or legal restrictions that unreasonably conflict with or ignore economic needs;

(2) Protection of opportunity—maintenance of an economic atmosphere in which domestic production and processing can prosper; protection from subsidized competing products; protection of opportunity to fish on the high seas in accordance with international law;

(3) Assistance—assistance consistent with that provided by the Government for industry generally, such as is involved in promoting good industrial relations, fair trade standards, harmonious labor relations, better health standards and sanitation; and including, but not limited to—

(a) services to provide current information on production and trade, market promotion and development, and an extension service,

(b) research services for economic and technologic development and resource conservation, and

(c) resource management to assure the maximum sustainable production for the fisheries.

The Congress further declares that the provisions of sections 742a to 742d, and 742e to 742j of this title are necessary in order to accomplish the objective of proper resource development, and that such sections

shall be administered with due regard to the inherent right of every citizen and resident of the United States to engage in fishing for his own pleasure, enjoyment, and betterment, and with the intent of maintaining and increasing the public opportunities for recreational use of our fish and wildlife resources, and stimulating the development of a strong, prosperous, and thriving fishery and fish processing industry. (Aug. 8, 1956, ch. 1036, § 2, 70 Stat. 1119.)

§ 742b. United States Fish and Wildlife Service.

(a) Assistant Secretary for Fish and Wildlife.

There is established within the Department of the Interior the position of Assistant Secretary for Fish and Wildlife. Such Assistant Secretary shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the same rate as other Assistant Secretaries.

(b) Establishment; Director of United States Fish and Wildlife Service; appointment; qualifications.

There is established within the Department of the Interior the United States Fish and Wildlife Service. The functions of the United States Fish and Wildlife Service shall be administered under the supervision of the Director, who shall be subject to the supervision of the Assistant Secretary for Fish and Wildlife. The Director of the United States Fish and Wildlife Service shall be appointed by the President, by and with the advice and consent of the Senate. No individual may be appointed as the Director unless he is, by reason of scientific education and experience, knowledgeable in the principles of fisheries and wildlife management.

(c) Succession to United States Fish and Wildlife Service and Bureau of Sport Fisheries and Wildlife.

The United States Fish and Wildlife Service established by subsection (b) of this section shall succeed to and replace the United States Fish and Wildlife Service (as constituted on June 30, 1974) and the Bureau of Sport Fisheries and Wildlife (as constituted on such date). All laws and regulations in effect on June 30, 1974, which relate to matters administered by the Department of the Interior through the United States Fish and Wildlife Service (as constituted on such date) and the Bureau of Sport Fisheries and Wildlife (as constituted on such date) shall remain in effect.

(d) Functions and responsibilities of Secretary of Interior.

All functions and responsibilities placed in the Department of the Interior or any official thereof by sections 742a to 742d and 742e to 742j of this title shall be included among the functions and responsibilities of the Secretary of the Interior, as the head of the Department, and shall be carried out under his direction pursuant to such procedures or delegations of authority as he may deem advisable and in the public interest. (As amended Apr. 22, 1974, Pub. L. 93-271, §1, 88 Stat. 92.)

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1974—Subsec. (a). Pub. L. 93-271, § 1(1), (2), struck out provisions relating to the establishment of the position of and the appointment of the Commissioner of Fish and Wildlife. Provisions for the establishment of the United States Fish and Wildlife Service within the Department of the Interior, consisting of the Bureau of Commercial Fisheries and the Bureau of Sport Fisheries and Wildlife, the appointment of a Director for each of the Bureaus, and the succession of the United States Fish and Wildlife Service to the Fish and Wildlife Service of the Department, were also struck out.

Subsec. (b). Pub. L. 93-271, § 1(3), substituted provisions for the establishment of the United States Fish and Wildlife Service within the Department of the Interior, for its administration by a Director subject to the supervision of the Assistant Secretary for Fish and Wildlife, the qualifications for and the appointment of the Director, for provisions relating to the administration of the United States Fish and Wildlife Service by the Commissioner of Fish and Wildlife subject to the supervision of the Assistant Secretary for Fish and Wildlife.

Subsec. (c). Pub. L. 93-271, § 1(3), added subsec. (c). Former subsec. (c) designated subsec. (d).

Subsec. (d). Pub. L. 93-271, § 1 (3), redesignated former subsec. (c) as (d). Former subsec. (d) relating to the distribution of functions, powers, and duties of former Fish and Wildlife Service was struck out.

Subsec. (e). Pub. L. 93-271, § 1 (3), struck out subsec. (e) relating to the continuation of all laws, rules and regulations administered by the former Fish and Wildlife Service.

Subsec. (f). Pub. L. 93-271, § 1(3), struck out subsec. (f) which provided for administrative authority in the Secretary of the Interior to carry out the provisions of sections 742a to 742d and 742e to 742j of this title, and for effective procedure for reorganization.

§ 742c. Loans for financing or refinancing of cost of purchasing, constructing, equipping, maintaining, repairing, or operating commercial fishing vessels or gear.

(a) Authorization.

The Secretary of the Interior is authorized, under such rules and regulations and under such terms and conditions as he may prescribe, to make loans for financing or refinancing of the cost of purchasing, constructing, equipping, maintaining, repairing, or operating new or used commercial fishing vessels or gear.

(b) Conditions.

Any loans made under the provisions of this section shall be subject to the following restrictions:

(1) Bear an interest rate of not less than (a) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (b) such additional charge, if any, toward covering other costs of the program as the Secretary may determine to be consistent with its purpose.

(2) Mature in not more than ten years, except that where a loan is for all or part of the costs of constructing a new fishing vessel, such period may be fourteen years.

(3) No financial assistance shall be extended pursuant to this section unless reasonable financial assistance applied for is not otherwise available on reasonable terms.

(4) Loans shall be approved only upon the furnishing of such security or other reasonable assurance of repayment as the Secretary may require considering the objectives of this section which are

to upgrade commercial fishing vessels and gear and to provide reasonable financial assistance not otherwise available to commercial fishermen. The proposed collateral for a loan must be of such a nature that, when considered with the integrity and ability of the management, and the applicant's past and prospective earnings, repayment of the loan will be reasonably assured.

(5) The applicant shall possess the ability, experience, resources, and other qualifications necessary to enable him to operate and maintain new or used commercial fishing vessels or gear.

(6) Before the Secretary approves a loan for the purchase or construction of a new or used vessel which will not replace an existing commercial fishing vessel, he shall determine that the applicant's contemplated operation of such vessel in a fishery will not cause economic hardship or injury to the efficient vessel operators already operating in that fishery.

(7) An applicant for a fishery loan must be a citizen or national of the United States.

(8) Within the meaning of this section, a corporation, partnership, or association shall not be deemed to be a citizen of the United States unless the Secretary determines that it satisfactorily meets all of the requirements set forth in section 802 of Title 46, for determining the United States citizenship of a corporation, partnership, or association operating a vessel in the coastwise trade.

(9) (A) The nationality of an applicant shall be established to the satisfaction of the Secretary. Within the meaning of this section, no corporation, partnership, or association organized under the laws of American Samoa shall be deemed a national of the United States unless 75 per centum of the interest therein is owned by nationals of the United States, citizens of the United States, or both, and in the case of a corporation, unless its president or other chief executive officer and the chairman of its board are nationals or citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are nonnationals and noncitizens.

(B) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by nationals of the United States, citizens of the United States, or both, (i) if the title to 75 per centum of its stock is not vested in such nationals and citizens free from any trust or fiduciary obligation in favor of any person not a national or citizen of the United States; or (ii) if 75 per centum of the voting power in such corporation is not vested in nationals of the United States, citizens of the United States, or both; or (iii) if through any contract or understanding it is so arranged that more than 25 per centum of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a national or citizen of the United States; or (iv) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a national or citizen of the United States.

(c) Fisheries loan fund; interest payments on appropriations available as capital to the fund less average undispersed cash balance.

There is created a fisheries loan fund, which shall be used by the Secretary as a revolving fund to make loans for financing and refinancing under this section. Any funds received by the Secretary on or before September 30, 1980, in payment of principal or interest on any loans so made shall be deposited in the fund and be available for making additional loans under this section. The Secretary shall pay from the fund into the miscellaneous receipts of the Treasury, at the close of each fiscal year, interest on the cumulative amount of appropriations available as capital to the fund from and after July 1, 1965, less the average undispersed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, taking into consideration the average market yield during the month preceding each fiscal year on outstanding Treasury obligations of maturity comparable to the average maturity of loans made from the fund. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest. Any funds received in the fisheries loan fund after September 30, 1980, and any balance remaining therein at the close of September 30, 1980 (at which time the fund shall cease to exist), shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fisheries loan fund the sum of $20,000,000 to provide initial capital.

(d) Modification of loan contract.

The Secretary, subject to the specific limitations in this section, may consent to the modification, with respect to the rate of interest, time of payment of any installment of principal, or security, of any loan contract to which he is a party.

(e) Chartering vessels; loans to Alaskan earthquake victims; termination date.

The Secretary is authorized under such terms and conditions and pursuant to regulations prescribed by him to use the funds appropriated under this section to make loans to commercial fishermen for the purpose of chartering fishing vessels pending the construction or repair of vessels lost, destroyed, or damaged by the earthquake of March 27, 1964, and subsequent tidal waves related thereto: *Provided*, That any loans made under this subsection shall only be repaid from the net profits of the operations of such chartered vessels, which profits shall be reduced by such reasonable amount as determined by the Secretary for the salary of the fishermen chartering such vessels. The funds authorized herein shall not be available for such loans after June 30, 1966. (Aug. 8, 1956, ch. 1036, § 4, 70 Stat. 1121; Sept. 2, 1958, Pub. L. 85–888, 72 Stat. 1710; May 20, 1964, Pub. L. 88–309, § 9, 78 Stat. 199; July 24, 1965, Pub. L. 89–85, §§ 1–4, 79 Stat. 262; June 12, 1970, Pub. L. 91–279, § 9, 84 Stat. 309; Aug. 24, 1970, Pub. L. 91–387, §§ 1, 2, 84 Stat. 829.)

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1970—Subsec. (b)(2). Pub. L. 91–279 provided ma-

turity period of fourteen years for loans for all or part of the costs of constructing new fishing vessels.

Subsec. (b)(7). Pub. L. 91-387, § 2, permitted a national of the United States to be an applicant for a fishery loan.

Subsec. (b)(8). Pub. L. 91-387, § 2, substituted provision for Secretary's determination of United States citizenship of a corporation, partnership, or association by satisfactorily meeting all of the requirements set forth in section 802 of Title 46 for determination of citizenship of such entity operating a vessel in the coastwise trade, for prior provision for establishment of such citizenship within meaning of section 802 of Title 46 to satisfaction of the Secretary.

Subsec. (b)(9). Pub. L. 91-387, § 2, added par. (9).

Subsec. (c). Pub. L. 91-387, § 1, extended the term for making fisheries loans, substituting "June 30, 1980" for "June 30, 1970" in three instances.

1965—Subsec. (a). Pub. L. 89-85, § 1, substituted "financing or refinancing of the cost of purchasing, constructing, equipping, maintaining, repairing, or operating new or used commercial fishing vessels or gear" for "financing and refinancing of operations, maintenance, replacement, repair, and equipment of fishing gear and vessels" and deleted provision for research into basic problems of fisheries.

Subsec. (b). Pub. L. 89-85, §§ 2, 3, substituted in par. (1) provision respecting determination of interest rate taking into consideration average market yield on outstanding Treasury obligations of comparable maturity plus additional charge toward coverage of other costs of the program for former provision prescribing an interest rate of not less than 3 per centum per annum and added pars. (4)—(8), respectively.

Subsec. (c). Pub. L. 89-85, § 4, extended the term for making fisheries loans from June 30, 1965 to June 30, 1970, required the Secretary to pay at the end of each fiscal year into the miscellaneous receipts of the Treasury interest on the cumulative amount of appropriations available as capital to the fund after July 1, 1965, less the average undispersed cash balance in the fund during the year, provided formula for determination of rate of interest, and authorized the deferral of interest payments but with payment of interest on deferred payments.

1964—Subsec. (e). Pub. L. 88-309 added subsec. (e).

1958—Subsec. (c). Pub. L. 85-888 increased authorization for $10,000,000 to $20,000,000.

§ 742d. Investigations; preparation and dissemination of information; reports.

The Secretary shall conduct continuing investigations, prepare and disseminate information, and make periodical reports to the public, to the President, and to Congress, with respect to the following matters:

(1) The production and flow to market of fish and fishery products domestically produced, and also those produced by foreign producers which affect the domestic fisheries;

(2) The availability and abundance and the biological requirements of the fish and wildlife resources;

(3) The competitive economic position of the various fish and fishery products with respect to each other, and with respect to competitive domestic and foreign-produced commodities;

(4) The collection and dissemination of statistics on commercial and sport fishing;

(5) The collection and dissemination of statistics on the nature and availability of wildlife, progress in acquisition of additional refuges and measures being taken to foster a coordinated program to encourage and develop wildlife values;

(6) The improvement of production and marketing practices in regard to commercial species and the conduct of educational and extension services relative to commercial and sport fishing, and wildlife matters;

(7) Any other matters which in the judgment of the Secretary are of public interest in connection with any phases of fish and wildlife operations.

(Aug. 8, 1956, ch. 1036, § 5, 70 Stat. 1121.)

§ 742d-1. Studies of effects in use of chemicals.

The Administrator of the Environmental Protection Agency is authorized and directed to undertake comprehensive continuing studies on the effects of insecticides, herbicides, fungicides and pesticides, upon the fish and wildlife resources of the United States, for the purpose of determining the amounts, percentages, and formulations of such chemicals that are lethal to or injurious to fish and wildlife and the amounts, percentages, mixtures, or formulations that can be used safely, and thereby prevent losses of fish and wildlife from such spraying, dusting, or other treatment. (Pub. L. 85-582, § 1, Aug. 1, 1958, 72 Stat. 479; 1970 Reorg. Plan No. 3, § 2(a)(2)(i), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

§ 742e. Transfer of functions, personnel, property, facilities, records, and funds; cooperation with other governmental agencies.

(a) There shall be transferred to the Secretary all functions of the Secretary of Agriculture, the Secretary of Commerce, and the head of any other department or agency, as determined by the Director of the Office of Management and Budget to relate primarily to the development, advancement, management, conservation, and protection of commercial fisheries; but nothing in this section shall be construed to modify the authority of the Department of State or the Secretary of State to negotiate or enter into any international agreements, or conventions with respect to the development, management, or protection of any fisheries and wildlife resources or with respect to international commissions operating under conventions to which the United States is a party.

(b) There shall be transferred to the Department of the Interior so much of the personnel, property, facilities, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) as the Director of the Office of Management and Budget determines to be necessary in connection with the exercise of any functions transferred to the Secretary pursuant to subsection (a) of this section.

(c) The Secretary may request and secure the advice or assistance of any department or agency of the Government in carrying out the provisions of sections 742a to 742d, and 742e to 742j of this title, and any such department or agency which furnishes advice or assistance to the Secretary may expend its own funds for such purposes, with or without reimbursement from the Secretary as may be agreed upon between the Secretary and the department or agency. (Aug. 8, 1956, ch. 1036, § 6, 70 Stat. 1122; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2086.)

CHANGE OF NAME

The Bureau of the Budget was designated the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively, by Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees, which also transferred all records, property, personnel, and funds of the Bureau to the Office of Management and Budget.

§ 742f. Policies, procedures, and recommendations.

(a) The Secretary of the Interior, with such advice and assistance as he may require from the Assistant Secretary for Fish and Wildlife, shall consider and determine the policies and procedures that are necessary and desirable in carrying out efficiently and in the public interest the laws relating to fish and wildlife. The Secretary, with the assistance of the departmental staff herein authorized, shall—

(1) develop and recommend measures which are appropriate to assure the maximum sustainable production of fish and fishery products and to prevent unnecessary and excessive fluctuations in such production;

(2) study the economic condition of the industry, and whenever he determines that any segment of the domestic fisheries has been seriously disturbed either by wide fluctuation in the abundance of the resource supporting it, or by unstable market or fishing conditions or due to any other factors he shall make such recommendations to the President and the Congress as he deems appropriate to aid in stabilizing the domestic fisheries;

(3) develop and recommend special promotional and informational activities with a view to stimulating the consumption of fishery products whenever he determines that there is a prospective or actual surplus of such products;

(4) take such steps as may be required for the development, advancement, management, conservation, and protection of the fisheries resources; and

(5) take such steps as may be required for the development, management, advancement, conservation, and protection of wildlife resources through research, acquisition of refuge lands, development of existing facilities, and other means.

(Aug. 8, 1956, ch. 1036, § 7, 70 Stat. 1122.)

§ 742g. Cooperation with State Department; representation at international meetings; consultations.

(a) The Secretary shall cooperate to the fullest practicable extent with the Secretary of State in providing representation at all meetings and conferences relating to fish and wildlife in which representatives of the United States and foreign countries participate.

The Secretary of State shall designate the Secretary of the Interior or the Assistant Secretary for Fish and Wildlife, or a person designated by the Secretary of the Interior to represent the Department of the Interior, as a member of the United States delegation attending such meetings and conferences and also as a member of the negotiating team of any such delegation.

(b) The Secretary of State and all other officials having responsibilities in the fields of technical and economic aid to foreign nations shall consult with the Secretary in all cases in which the interests of fish and wildlife are involved, with a view to assuring that such interests are adequately represented at all times.

(c) Notwithstanding any other provision of law, the Secretary shall be represented in all international negotiations conducted by the United States pursuant to section 1351 of Title 19, in any case in which fish products are directly affected by such negotiations.

(d) The Secretary shall consult periodically with the various governmental, private nonprofit, and other organizations and agencies which have to do with any phase of fish and wildlife with respect to any problems that may arise in connection with such fish and wildlife. (Aug. 8, 1956, ch. 1036, § 8, 70 Stat. 1123.)

§ 742h. Reports to Congress and the President.

(a) The Secretary of the Interior shall make an annual report to the Congress with respect to activities of the United States Fish and Wildlife Service under sections 742a to 742d, and 742e to 742j of this title, and shall make such recommendations for additional legislation as he deems necessary.

(b) The Secretary is authorized to make a report to the President and the Congress, and, when requested by the United States Tariff Commission in connection with section 1364 of Title 19, or when an investigation is made under the Tariff Act of 1930, the Secretary is authorized to make a report to such Commission, concerning the following matters with respect to any fishery product which is imported into the United States, or such reports may be made upon a request from any segment of the domestic industry producing a like or directly competitive product—

(1) whether there has been a downward trend in the production, employment in the production, or prices, or a decline in the sales, of the like or directly competitive product by the domestic industry; and

(2) whether there has been an increase in the imports of the fishery products into the United States, either actual or relative to the production of the like or directly competitive product produced by the domestic industry.

(Aug. 8, 1956, ch. 1036, § 9, 70 Stat. 1123.)

§ 742i. Effect on rights of States and international commissions.

Nothing in sections 742a to 742d, and 742e to 742j of this title shall be construed (1) to interfere in any manner with the rights of any State under the Sub-

merged Lands Act or otherwise provided by law, or to supersede any regulatory authority over fisheries exercised by the States either individually or under interstate compacts; or (2) to interfere in any manner with the authority exercised by any International Commission established under any treaty or convention to which the United States is a party. (Aug. 8, 1956, ch. 1036, § 10, 70 Stat. 1124.)

§ 742j. Appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 742a to 742d, and 742e to 742j of this title. (Aug. 8, 1956, ch. 1036, § 11, 70 Stat. 1124.)

§§ 742b to 742d, 742e to 742i.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the notes under these sections in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 742j–1. Airborne hunting.

(a) Prohibition; penalty.

Any person who—

(1) while airborne in an aircraft shoots or attempts to shoot for the purpose of capturing or killing any bird, fish, or other animal; or

(2) uses an aircraft to harass any bird, fish, or other animal; or

(3) knowingly participates in using an aircraft for any purpose referred to in paragraph (1) or (2);

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Exception; report of State to Secretary.

(1) This section shall not apply to any person if such person is employed by, or is an authorized agent of or is operating under a license or permit of, any State or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops, and each such person so operating under a license or permit shall report to the applicable issuing authority each calendar quarter the number and type of animals so taken.

(2) In any case in which a State, or any agency thereof, issues a permit referred to in paragraph (1) of this subsection, it shall file with the Secretary of the Interior an annual report containing such information as the Secretary shall prescribe, including but not limited to—

(A) the name and address of each person to whom a permit was issued;

(B) a description of the animals authorized to be taken thereunder, the number of animals authorized to be taken, and a description of the area from which the animals are authorized to be taken;

(C) the number and type of animals taken by such person to whom a permit was issued; and

(D) the reason for issuing the permit.

(c) "Aircraft" defined.

As used in this section, the term "aircraft" means any contrivance used for flight in the air.

(d) Enforcement; regulations; arrest; search; issuance and execution of warrants and process; cooperative agreements.

The Secretary of the Interior shall enforce the provisions of this section and shall promulgate such regulations as he deems necessary and appropriate to carry out such enforcement. Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this section may, without warrant, arrest any person committing in his presence or view a violation of this section or of any regulation issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this section; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this section, and by such agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this section. Any judge of any court established under the laws of the United States, and any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(e) Forfeiture.

All birds, fish, or other animals shot or captured contrary to the provisions of this section, or of any regulation issued hereunder, and all guns, aircraft, and other equipment used to aid in the shooting, attempting to shoot, capturing, or harassing of any bird, fish, or other animal in violation of this section or of any regulation issued hereunder shall be subject to forfeiture to the United States.

(f) Certain customs laws applied.

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this section, be exercised or performed by the Secretary of the Interior or by such persons as he may designate. (Aug. 8, 1956, ch. 1036, § 13, as added Nov. 18, 1971, Pub. L. 92–159, § 1, 85 Stat. 480, and amended Oct. 18, 1972, Pub. L. 92–502, 86 Stat. 905.)

AMENDMENTS

1972—Subsecs. (d)–(f). Pub. L. 92–502 added subsecs. (d)–(f).

§ 742k. Management and disposition of vessels and other property acquired and arising out of fishery loans or related type of activities.

For the purpose of facilitating administration of, and protecting the interest of the Government in, the fishery loan fund established by section 742c of this title and any related type of activities relating to fisheries for which the Department of the Interior is now or may hereafter be responsible, the Secretary of the Interior, notwithstanding any other provision of law, may hereafter administer, complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, assign, or sell upon such terms and conditions as he may deem most advantageous to the United States, any vessel, plant, or other property acquired by him on behalf of the United States and arising out of any fishery loan or any related type of activity by the Secretary of the Interior. The Secretary may use any of the applicable funds in each particular instance for the aforesaid purposes. (Pub. L. 87–219, Sept. 13, 1961, 75 Stat. 493.)

§ 743. Repealed. Pub. L. 93–280, § 1(2), May 10, 1974, 88 Stat. 123.

Section, act Mar. 3, 1885, ch. 360, § 1(1), 23 Stat. 494, Stat. 123, was part of a paragraph entitled: "Propagation of Food Fishes" in the Sundry Civil Expenses Appropriation Act, 1886. It authorized the Secretary of the Treasury to detail Coast Guard personnel to the Fish and Wildlife Services for duty. See section 743a of this title.

§ 743a. Detail of personnel and loan of equipment to the Director of the Bureau of Sport Fisheries and Wildlife; reports to Congress.

(A) As used in this section, the term "agency" means the department in which the Coast Guard is operating, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Atomic Energy Commission, and the National Aeronautics and Space Administration.

(B) The chief executive officer of each agency may from time to time—

(i) detail from the agency for duty under the Director of the Bureau of Sport Fisheries and Wildlife, Department of the Interior, such commissioned and enlisted personnel and civilian employees as may be spared for such duty; and

(ii) consonant with the operational needs of the agency, loan equipment of the agency to the Director.

(C) The Director of the Bureau of Sport Fisheries and Wildlife shall make an annual report at the end of each fiscal year to the Congress concerning the utilization of the provisions of this section and the additional cost, if any, to the Federal Government resulting therefrom. Such annual report shall be referred in the Senate to the Committee on Commerce and in the House of Representatives to the Committee on Merchant Marine and Fisheries. (Mar. 3, 1885, ch. 360, § 1(2), as added May 10, 1974, Pub. L. 93–280, § 1(3), 88 Stat. 124.)

§ 744. Investigations; fish propagation; annual statement of expenditures; investigations of damages by predacious fishes; executive assistance.

The Director of the Fish and Wildlife Service shall prosecute investigations and inquiries on the subject, with the view of ascertaining whether any and what diminution in the number of the food fishes of the coast and the lakes of the United States has taken place; and, if so, to what causes the same is due; and also whether any and what protective, prohibitory, or precautionary measures should be adopted in the premises; and shall report upon the same to Congress. He shall submit annually to Congress at the beginning of each session a detailed statement of expenditures under all appropriations for "propagation of food fishes." He is authorized and directed to conduct investigations and experiments for the purpose of ameliorating the damage wrought to the fisheries by dogfish and other predacious fishes and aquatic animals. Said investigations and experiments shall be such as to develop the best and cheapest means of taking such fishes and acquatic animals, of utilizing them for economic purposes, especially for food, and to encourage the establishment of fisheries and markets for them.

The heads of the several executive departments shall cause to be rendered all necessary and practicable aid to the Director in the prosecution of his investigations and inquiries. (R. S. §§ 4396, 4397; Mar. 3, 1887, ch. 362, 24 Stat. 523; June 21, 1916, ch. 160, §§ 1, 2, 39 Stat. 232; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232.)

§ 745. Powers of Director.

The Director of the Fish and Wildlife Service may take or cause to be taken at all times, in the waters of the seacoast of the United States, where the tide ebbs and flows, and also in the waters of the lakes, such fish or specimens thereof as may in his judgment, from time to time, be needful or proper for the conduct of his duties, any law, custom, or usage of any State to the contrary notwithstanding. (R. S. § 4398; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232.)

§ 746. Vessels of Fish and Wildlife Service.

The Secretary of the Navy is authorized to place the vessels of the United States Fish and Wildlife Service on the same footing with the Navy Department as those of the United States Coast and Geodetic Survey. (May 31, 1880, ch. 113, 21 Stat. 151; 1939 Reorg. Plan No. II. § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232.)

§ 747. Vessels of bureau; commutation of rations of officers and crews.

CODIFICATION

Section, act Mar. 28, 1922, ch. 117, title I, 42 Stat. 484; act Jan. 5, 1923, ch. 24, title I, 42 Stat. 1125; act May 28, 1924, ch. 204, title III, 43 Stat. 238; act Feb. 27, 1925, ch. 364, title III, 43 Stat. 1047 was provision of an appropriation act which was confined to specific appropriations.

§ 748. Expenditure of appropriations for propagation of food fishes.

Appropriations for propagation of food fishes shall not be expended for hatching or planting fish or eggs in any State in which, in the judgment of the

Secretary of the Interior, there are not adequate laws for the protection of the fishes, nor in any State in which the United States Director of the Fish and Wildlife Service and his duly authorized agents are not accorded full and free right to conduct fish-cultural operations, and all fishing and other operations necessary therefor, in such manner and at such times as is considered necessary and proper by the said director or his agents. (July 1, 1918, ch. 113, § 1, 40 Stat. 693; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232.)

§ 749. Advisory committee; designations; duties; expenses.

CODIFICATION

Section, Act June 16, 1921, ch. 23, § 4, 42 Stat. 63, provided for an advisory committee to visit the Fish and Wildlife Service, and is omitted since it was derived from an appropriation act and is now obsolete.

§ 750. Station on Mississippi River for rescue of fishes and propagation of mussels.

There shall be established on the Mississippi River, at a point to be selected by the Secretary of the Interior, a station for the rescue of fishes and the propagation of mussels in connection with fish-rescue operations throughout the Mississippi Valley, to be under the direction of the Fish and Wildlife Service of the Department of the Interior. (Apr. 28, 1922, ch. 153, § 1, 42 Stat. 501; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232.)

§ 751. Same; personnel.

In connection with the establishment of such fish-rescue station there is authorized the following personnel, namely: One district supervisor, to have general charge of fish-rescue and fish-cultural operations in the Mississippi Valley; a superintendent, two field foremen, four fish-culturists at large, one engineer at large, one clerk, two coxswains at large, and two apprentice fish-culturists. (Apr. 28, 1922, ch. 153, § 2, 42 Stat. 501.)

§ 752. Exchange of equipment by Service as part payment for other equipment.

The Fish and Wildlife Service may exchange motor-propelled and horse-drawn vehicles, tractors, road equipment, boats, aircraft, typewriters, computing or duplicating machines, or parts, accessories, tires, or equipment thereof, in part payment for vehicles, tractors, road equipment, boats, aircraft, typewriters, computing or duplicating machines, or parts, accessories, tires, or equipment thereof. (June 28, 1941, ch. 259, § 1, 55 Stat. 357; July 2, 1942, ch. 473, § 1, 56 Stat. 557.)

§ 753. Cooperative work.

Cooperative work conducted by the Fish and Wildlife Service shall be subject to the provisions of sections 563 and 564 of Title 5. (June 28, 1941, ch. 259, § 1, 55 Stat. 357; July 2, 1942, ch. 473, § 1, 56 Stat. 557.)

§ 753a. Cooperative research and training programs for fish and wildlife resources.

For the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, the Secretary of the Interior is authorized to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several States, and with nonprofit organizations relating to cooperative research units: *Provided*, That Federal participation in the conduct of such cooperative unit programs shall be limited to the assignment of Department of the Interior technical personnel by the Secretary to serve at the respective units, to supply for the use of the particular units' operations such equipment as may be available to the Secretary for such purposes, and the payment of incidental expenses of Federal personnel and employees of cooperating agencies assigned to the units. (Pub. L. 86–686, § 1, Sept. 2, 1960, 74 Stat. 733.)

§ 753b. Same; authorization of appropriations.

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of section 753a of this title. (Pub. L. 86–686, § 2, Sept. 2, 1960, 74 Stat. 733.)

§ 754. Commutation of rations for officers and crews of vessels of the Service.

Commutation of rations (not to exceed $1 per man per day) may be paid to officers and crews of vessels of the Fish and Wildlife Service under regulations prescribed by the Secretary of the Interior, and money accruing from commutation of rations on board vessels may be paid on proper vouchers to the persons having charge of the mess of such vessels; and section 75a of Title 5, shall not be construed to require deductions from the salaries of officers and crews of vessels of the Fish and Wildlife Service for quarters and rations furnished on vessels of said Service. (June 28, 1941, ch. 259, § 1, 55 Stat. 357; July 2, 1942, ch. 473, § 1, 56 Stat. 557.)

TRANSFER OF FUNCTIONS

The Bureau of Commercial Fisheries in the Department of the Interior and the Office of Director of the Bureau were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ———, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred to the Secretary of Commerce all functions formerly vested by law in the Bureau together with all functions formerly vested in the Secretary of the Interior or the Department of the Interior administered through the Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir Research, the Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigation. Such Reorg. Plan also transferred the marine sport fish program of the Bureau of Sport Fisheries and Wildlife.

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

11. Forest and Rangeland Renewable Resources

16 U.S.C. 1601–1610

Sec.

§ 1601. Renewable Resource Assessment; preparation by Secretary of Agriculture; time of preparation, updating and contents.

In recognition of the vital importance of America's renewable resources of the forest, range, and other associated lands to the Nation's social and economic well-being, and of the necessity for a long term perspective in planning and undertaking related national renewable resource programs administered by the Forest Service, the Secretary of Agriculture shall prepare a Renewable Resource Assessment (hereinafter called the "Assessment"). The Assessment shall be prepared not later than December 31, 1975, and shall be updated during 1979 and each tenth year thereafter, and shall include but not be limited to—

(1) an analysis of present and anticipated uses, demand for, and supply of the renewable resources, with consideration of the international resource situation, and an emphasis of pertinent supply and demand and price relationship trends;

(2) an inventory, based on information developed by the Forest Service and other Federal agencies, of present and potential renewable resources, and an evaluation of opportunities for improving their yield of tangible and intangible goods and services, together with estimates of investment costs and direct and indirect returns to the Federal Government;

(3) a description of Forest Service programs and responsibilities in research, cooperative programs and management of the National Forest System, their interrelationships, and the relationship of these programs and responsibilities to public and private activities; and

(4) a discussion of important policy considerations, laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands.

(Pub. L. 93–378, § 2(a), Aug. 17, 1974, 88 Stat. 476.)

SHORT TITLE

Section 1 of Pub. L. 93–378 provided: "That this Act [which enacted this chapter and amended section 581h of this title] may be cited as the 'Forest and Rangeland Renewable Resources Planning Act of 1974'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1606 of this title.

§ 1602. Renewable Resource Program; preparation by Secretary of Agriculture and transmittal to President; purpose and development of program; time of preparation, updating and contents.

In order to provide for periodic review of programs for management and administration of the National Forest System, for research, for cooperative State and private Forest Service programs, and for conduct of other Forest Service activities in relation to the findings of the Assessment, the Secretary of Agriculture, utilizing information available to the Forest Service and other agencies within the Department of Agriculture, including data prepared pursuant to section 1010a of Title 7, shall prepare and transmit to the President a recommended Renewable Resource Program (hereinafter called the "Program"). The Program transmitted to the President may include alternatives, and shall provide in appropriate detail for protection, management, and development of the National Forest System, includ-

ing forest development roads and trails; for cooperative Forest Service programs; and for research. The Program shall be developed in accordance with principles set forth in the Multiple-Use Sustained-Yield Act of 1960, and the National Environmental Policy Act of 1969. The Program shall be prepared not later than December 31, 1975, to cover the four-year period beginning October 1, 1976, and at least each of the four fiscal decades next following such period, and shall be updated no later than during the first half of the fiscal year ending September 30, 1980, and the first half of each fifth fiscal year thereafter to cover at least each of the four fiscal decades beginning next after such updating. The Program shall include, but not be limited to—

(1) an inventory of specific needs and opportunities for both public and private program investments. The inventory shall differentiate between activities which are of a capital nature and those which are of an operational nature;

(2) specific identification of Program outputs, results anticipated, and benefits associated with investments in such a manner that the anticipated costs can be directly compared with the total related benefits and direct and indirect returns to the Federal Government;

(3) a discussion of priorities for accomplishment of inventoried Program opportunities, with specified costs, outputs, results, and benefits; and

(4) a detailed study of personnel requirements as needed to satisfy existing and ongoing programs.

(Pub. L. 93–378, § 3, Aug. 17, 1974, 88 Stat. 477.)

§ 1603. National Forest System resource inventories; development, maintenance, and updating by Secretary of Agriculture as part of Assessment.

As a part of the Assessment, the Secretary of Agriculture shall develop and maintain on a continuing basis a comprehensive and appropriately detailed inventory of all National Forest System lands and renewable resources. This inventory shall be kept current so as to reflect changes in conditions and identify new and emerging resources and values. (Pub. L. 93–378, § 4, Aug. 17, 1974, 88 Stat. 477.)

§ 1604. National Forest System land and resource management plans; development, maintenance and revision by Secretary of Agriculture as part of Program; coordination; criteria.

(a) As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

(b) In the development and maintenance of land management plans for use on units of the National Forest System, the Secretary shall use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences. (Pub. L. 93–378, § 5, Aug. 17, 1974, 88 Stat. 477.)

§ 1605. Protection, use and management of renewable resources on non-Federal lands; utilization of Assessment, surveys and Program by Secretary of Agriculture to assist States, etc.

The Secretary of Agriculture may utilize the Assessment, resource surveys, and Program prepared pursuant to this chapter to assist States and other organizations in proposing the planning for the protection, use, and management of renewable resources on non-Federal land. (Pub. L. 93–378, § 6, Aug. 17, 1974, 88 Stat. 478.)

§ 1606. Budget requests by President for Forest Service activities.

(a) Transmittal to Speaker of House and President of Senate of Assessment, Program and Statement of Policy used in framing requests; time for transmittal; implementation by President of programs established under Statement of Policy unless Statement subsequently disapproved by Congress; time for disapproval.

On the date Congress first convenes in 1976 and thereafter following each updating of the Assessment and the Program, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate, when Congress convenes, the Assessment as set forth in section 1601 of this title and the Program as set forth in section 1602 of this title, together with a detailed Statement of Policy intended to be used in framing budget requests by that Administration for Forest Service activities for the five- or ten-year program period beginning during the term of such Congress for such further action deemed appropriate by the Congress. Following the transmission of such Assessment, Program, and Statement of Policy, the President shall, subject to other actions of the Congress, carry out programs already established by law in accordance with such Statement of Policy or any subsequent amendment or modification thereof approved by the Congress, unless, before the end of the first period of sixty calendar days of continuous session of Congress after the date on which the President of the Senate and the Speaker of the House are recipients of the transmission of such Assessment, Program, and Statement of Policy, either House adopts a resolution reported by the appropriate committee of jurisdiction disapproving the Statement of Policy. For the purpose of this subsection, the continuity of a session shall be deemed to be broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the sixty-day period. Notwithstanding any other provision of this chapter, Congress may revise or modify the Statement of Policy transmitted by the President, and the revised or modified Statement of Policy shall be used in framing budget requests.

(b) Contents of requests to show extent of compliance of projected programs and policies with policies approved by Congress; requests not conforming to approved policies; expenditure of appropriations.

Commencing with the fiscal budget for the year ending September 30, 1977, requests presented by the President to the Congress governing Forest Service activities shall express in qualitative and quantitative terms the extent to which the programs and policies projected under the budget meet the policies approved by he Congress in accordance with subsection (a) of this section. In any case in which such budget so presented recommends a course which fails to meet the policies so established, the President shall specifically set forth the reason or reasons for requesting the Congress to approve the lesser programs or policies presented. Amounts appropriated to carry out the policies approved in accordance with subsection (a) of this section shall be expended in accordance with the Congressional Budget and Impoundment Control Act of 1974.

(c) Annual evaluation report to Congress of Program components; time of submission.

For the purpose of providing information that will aid Congress in its oversight responsibilities and improve the accountability of agency expenditures and activities, the Secretary of Agriculture shall prepare an annual report which evaluates the component elements of the Program required to be prepared by section 1602 of this title which shall be furnished to the Congress at the time of submission of the annual fiscal budget commencing with the third fiscal year after August 17, 1974.

(d) Required contents of annual evaluation report.

These annual evaluation reports shall set forth progress in implementing the Program required to be prepared by section 1602 of this title, together with accomplishments of the Program as they relate to the objectives of the Assessment. Objectives should be set forth in qualitative and quantitative terms and accomplishments should be reported accordingly. The report shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. Program benefits shall include, but not be limited to, environmental quality factors such as esthetics, public access, wildlife habitat, recreational and wilderness use, and economic factors such as the excess of cost savings over the value of foregoing benefits and the rate of return on renewable resources.

(e) Additional required contents of annual evaluation report.

The reports shall indicate plans for implementing corrective action and recommendations for new legislation where warranted.

(f) Form of annual evaluation report.

The reports shall be structured for Congress in concise summary form with necessary detailed data in appendices. (Pub. L. 93–378, § 7, Aug. 17, 1974, 88 Stat. 478.)

§ 1607. National Forest System renewable resources; development and administration by Secretary of Agriculture in accordance with multiple use and sustained yield concepts for products and services; target year for operational posture of resources; budget requests.

The Secretary of Agriculture shall take such action as will assure that the development and administration of the renewable resources of the National Forest System are in full accord with the concepts for multiple use and sustained yield of products and services as set forth in the Multiple-Use Sustained-Yield Act of 1960. To further these concepts, the Congress hereby sets the year 2000 as the target year when the renewable resources of the National Forest System shall be in an operating posture whereby all backlogs of needed treatment for their restoration shall be reduced to a current basis and the major portion of planned intensive multiple-use sustained-yield management procedures shall be installed and operating on an environmentally-sound basis. The annual budget shall contain requests for funds for an orderly program to eliminate such backlogs: *Provided,* That when the Secretary finds that (1) the backlog of areas that will benefit by such treatment has been eliminated, (2) the cost of treating the remainder of such area exceeds the economic and environmental benefits to be secured from their treatment, or (3) the total supplies of the renewable resources of the United States are adequate to meet the future needs of the American people, the budget request for these elements of restoration may be adjusted accordingly. (Pub. L. 93–378, § 8, Aug. 17, 1974, 88 Stat. 479.)

§ 1608. National Forest Transportation System; Congressional declaration of policy; time for development; method of financing; financing of forest development roads.

The Congress declares that the installation of a proper system of transportation to service the National Forest System, as is provided for in Public Law 88–657, shall be carried forward in time to meet anticipated needs on an economical and environmentally sound basis, and the method chosen for financing the construction and maintenance of the transportation system should be such as to enhance local, regional, and national benefits, except that the financing of forest development roads as authorized by clause (2) of section 535 of this title, shall be deemed "budget authority" and "budget outlays" as those terms are defined in section 1302(a) of Title 31, and shall be effective for any fiscal year only in the manner required for new spending authority as specified by section 1351(a) of Title 31. (Pub. L. 93–378, § 9, Aug. 17, 1974, 88 Stat. 479.)

§ 1609. National Forest System; Congressional declaration of constituent elements and purposes; lands, etc., included within; location of Forest Service offices.

(a) Congress declares that the National Forest System consists of units of federally owned forest, range, and related lands throughout the United States and its territories, united into a nationally significant system dedicated to the long-term benefit for present and future generations, and that it is the purpose of this section to include all such areas into one integral system. The "National Forest System" shall include all national forest lands reserved or withdrawn from the public domain of the United States, all national forest lands acquired through

purchase, exchange, donation, or other means, the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act, and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system.

(b) The on-the-ground field offices, field supervisory offices, and regional offices of the Forest Service shall be so situated as to provide the optimum level of convenient, useful services to the public, giving priority to the maintenance and location of facilities in rural areas and towns near the national forest and Forest Service program locations in accordance with the standards in section 3122(b) of Title 42. (Pub. L. 93–378, § 10, Aug. 17, 1974, 88 Stat. 480.)

§ 1610. Implementation of provisions by Secretary of Agriculture; utilization of information and data of other organizations; avoidance of duplication of planning, etc., definition of "renewable resource".

In carrying out this chapter, the Secretary of Agriculture shall utilize information and data available from other Federal, State, and private organizations and shall avoid duplication and overlap of resource assessment and program planning efforts of other Federal agencies. The term "renewable resources" shall be construed to involve those matters within the scope of responsibilities and authorities of the Forest Service on August 17, 1974. (Pub. L. 93–378, § 11, Aug. 17, 1974, 88 Stat. 480.)

12. Forest and Rangeland Renewable Resources Amendments

P.L. 94–588 (90 Stat. 2949)

AN ACT

To amend the Forest and Rangeland Renewable Resources Planning Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Forest Management Act of 1976".

FINDINGS

SEC. 2. The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476; 16 U.S.C. 1601–1610) is amended by redesignating section 2 through 11 as sections 3 through 12, respectively; and by adding a new section 2 as follows:

"SEC. 2. FINDINGS.—The Congress finds that—

"(1) the management of the Nation's renewable resources is highly complex and the uses, demand for, and supply of the various resources are subject to change over time;

"(2) the public interest is served by the Forest Service, Department of Agriculture, in cooperation with other agencies, assessing the Nation's renewable resources, and developing and preparing a national renewable resource program, which is periodically reviewed and updated;

"(3) to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528–531), and public participation in the development of the program;

"(4) the new knowledge derived from coordinated public and private research programs will promote a sound technical and ecological base for effective management, use, and protection of the Nation's renewable resources;

"(5) inasmuch as the majority of the Nation's forests and rangeland is under private, State, and local governmental management and the Nation's major capacity to produce goods and services is based on these nonfederally managed renewable resources, the Federal Government should be a catalyst to encourage and assist these owners in the efficient long-term use and improvement of these lands and their renewable resources consistent with the principles of sustained yield and multiple use;

"(6) the Forest Service, by virtue of its statutory authority for management of the National Forest System, research and cooperative programs, and its role as an agency in the Department of Agriculture, has both a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity; and

"(7) recycled timber product materials are as much a part of our renewable forest resources as are the trees from which they originally came, and in order to extend our timber and timber fiber resources and reduce pressures for timber production from Federal lands, the Forest Service should expand its research in the use of recycled and waste timber product materials, develop techniques for the substitution of these secondary materials for primary materials, and promote and encourage the use of recycled timber product materials.".

REPORTS ON FIBER POTENTIAL, WOOD UTILIZATION BY MILLS, WOOD WASTES AND WOOD PRODUCT RECYCLING

SEC. 3. Section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by adding at the end thereof a new subsection (c) as follows:

"(c) The Secretary shall report in the 1979 and subsequent Assessments on:

"(1) the additional fiber potential in the National Forest System including, but not restricted to, forest mortality, growth, salvage potential, potential increased forest products sales, economic consraints, alternate markets, contract considerations, and other multiple use considerations;

"(2) the potential for increased utilization of forest and wood product wastes in the National Forest System and on other lands, and of urban wood wastes and wood product recycling, including recommendations to the Congress for actions which would lead to increased utilization of material now being wasted both in the forests and in manufactured products; and

"(3) the milling and other wood fiber product fabrication facilities and their location in the United States, noting the public and private forested areas that supply such facilities, assessing the degree of utilization into product form of harvested trees by such facilities, and setting forth the technology appropriate to the facilities to improve utilization either individually or in aggregate units of harvested trees and to reduce wasted wood fibers. The Secretary shall set forth a program to encourage the adoption by these facilities of these technologies for improving wood fiber utilization.

"(d) In developing the reports required under subsection (c) of this section, the Secretary shall provide opportunity for public involvement and shall consult with other interested governmental departments and agencies.".

REFORESTATION

SEC. 4. Section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by adding at the end thereof new subsections (d) and (e) as follows:

"(d) (1) It is the policy of the Congress that all forested lands in the National Forest System shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stand designed to secure the maximum benefits of multiple use sustained yield management in accordance with land management plans. Accordingly, the Secretary is directed to identify and report to the Congress annually at the time of submission of the President's budget together with the annual report provided for under section 8(c) of this Act, beginning with submission of the President's budget for fiscal year 1978, the amount and location by forests, and States and by productivity class, where practicable, of all lands in the National Forest System where objectives of land management plans indicate the need to reforest areas that have been cut-over or otherwise denuded or deforested, and all lands with stands of trees that are not growing at their best potential rate of growth. All national forest lands treated from year to year shall be examined after the first and third growing seasons and certified by the Secretary in the report provided for under this subsection as to stocking rate, growth rate in relation to potential and other pertinent measures. Any lands not certified as satisfactory shall be returned to the backlog and scheduled for prompt treatment. The level and types of treatment shall be those which secure the most effective mix of multiple use benefits.

"(2) Notwithstanding the provisions of section 9 of this Act, the Secretary shall annually for eight years following the enactment of this subsection, transmit to the Congress in the manner provided in this subsection an estimate of the sums necessary to be appropriated, in addition to the funds available from other sources, to replant and otherwise treat an acreage equal to the acreage to be cut over that year, plus a sufficient portion of the backlog of lands found to be in need of treatment to eliminate the backlog within the eight-year period. After such eight-year period, the Secretary shall transmit annually to the Congress an estimate of the sums necessary to replant and otherwise treat all lands being cut over and maintain planed timber production on all other forested lands in the National Forest Systems so as to prevent the development of a backlog of needed work larger than the needed work at the beginning of the fiscal year. The Secretary's estimate of sums necessary, in addition to the sums available under other authorities, for accomplishment of the reforestation and other treatment of National Forest System lands under this section shall be provided annually for inclusion in the President's budget and shall also be transmitted to the Speaker of the House and the President of the Senate together with the annual report provided for under section 8(c) of this Act at the time of submission of the President's budget to the Congress beginning with the budget for fiscal year 1978. The sums estimated as necessary for reforestation and other treatment shall include moneys needed to secure seed, grow seedlings, prepare sites, plant trees, thin, remove deleterious growth and underbush, build fence to exclude livestock and adverse wildlife from regeneration areas and otherwise establish and improve growing forests to secure planned production of trees and other multiple use values.

"(3) Effective for the fiscal year beginning October 1, 1977, and each fiscal year thereafter, there is hereby authorized to be appropriated for the purpose of reforesting and treating lands in the National Forest System $200,000,000 annually to meet requirements of this subsection (d). All sums appropriated for the purposes of this subsection shall be available until expended.

"(e) The Secretary shall submit an annual report to the Congress on the amounts, types, and uses of herbicides and pesticides used in the National Forest System, including the beneficial or adverse effects of such uses.".

RENEWABLE RESOURCE PROGRAM

SEC. 5. Section 4 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by striking out the word "and" at the end of paragraph (3); striking out the word "satisfy" and inserting in lieu thereof "implement and monitor" in paragraph (4); striking out the period at the end of paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and by adding a new paragraph (5) as follows:

"(5) Program recommendations which—

"(A) evaluate objectives for the major Forest Service programs in order that multiple-use and sustained-yield relationships among and within the renewable resources can be determined;

"(B) explain the opportunities for owners of forests and rangeland to participate in programs to improve and enhance the condition of the land and the renewable resource products therefrom;

"(C) recognize the fundamental need to protect and, where appropriate, improve the quality of soil, water, and air resources;

"(D) state national goals that recognize the interrelationships between the interdependence within the renewable resources; and

"(E) evaluate the impact of the export and import of raw logs upon domestic timber supplies and prices.".

NATIONAL FOREST SYSTEM RESOURCE PLANNING

SEC. 6. Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by adding at the end thereof new subsections (c) through (m) as follows:

"(c) The Secretary shall begin to incorporate the standards and guidelines required by this section in plans for units of the National Forest System as soon as practicable after enactment of this subsection and shall attempt to complete such incorporation for all such units by no later than September 30, 1985. The Secretary shall report to the Congress on the progress of such incorporation in the annual report required by section 8(c) of this Act. Until such time as a unit of the National Forest System is managed under plans developed in accordance with this Act, the management of such unit may continue under existing land and resource management plans.

"(d) The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.

"(e) In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans—

"(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960, and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and

"(2) determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1), the definition of the terms 'multiple use' and 'sustained yield' as provided in the Multiple-Use Sustained-Yield Act of 1960, and the availability of lands and their suitability for resource management.

"(f) Plans developed in accordance with this section shall—

"(1) form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section;

"(2) be embodied in appropriate written material, including maps and other descriptive documents, reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan;

"(3) be prepared by an interdisciplinary team. Each team shall prepare its plan based on inventories of the applicable resources of the forest;

"(4) be amended in any manner whatsoever after final adoption after public notice, and, if such amendment would result in a significant change in such plan, in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section; and

"(5) be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years, and (B) in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.

"(g) As soon as practicable, but not later than two years after enactment of this subsection, the Secretary shall in accordance with the procedures set forth in section 553 of title 5, United States Code, promulgate regulations, under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set out the process for the development and revision of the land maangement plans, and the guidelines and standards prescribed by this sub-

section. The regulations shall include, but not be limited to—

"(1) specifying procedures to insure that land management plans are prepared in accordance with the National Environmental Policy Act of 1969, including, but not limited to, direction on when and for what plans an environmental impact statement required under section 102(2)(C) of that Act shall be prepared;

"(2) specifying guidelines which—

"(A) require the identification of the suitability of lands for resource management;

"(B) provide for obtaining inventory data on the various renewable resources, and soil and water, including pertinent maps, graphic material, and explanatory aids; and

"(C) provide for methods to identify special conditions or situations involving hazards to the various resources and their relationship to alternative activities;

"(3) specifying guidelines for land management plans developed to achieve the goals of the Program which—

"(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;

"(B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

"(C) insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

"(D) permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if (i) such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960, and (ii) such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned;

"(E) insure that timber will be harvested from National Forest System lands only where—

"(i) soil, slope, or other watershed conditions will not be irreversibly damaged;

"(ii) there is assurance that such lands can be adequately restocked within five years after harvest;

"(iii) protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from deterimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat; and

"(iv) the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

"(F) insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate and even-aged stand of timber will be used as a cutting method on National Forest System lands only where—

"(i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land management plan;

"(ii) the interdisciplinary review as determined by the Secretary has been completed and the potential environmental, biological, esthetic, engineering, and economic impacts on each advertised sale area have been assessed, as well as the consistency of the sale with the multiple use of the general area;

"(iii) cut backs, patches, or strips are shaped and blended to the extent practicable with the natural terrain;

"(iv) there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for areas to be cut in one harvest operation, including provision to exceed the established limits after appropriate public notice and review by the responsible Forest Service officer one level above the Forest Service officer who normally would approve the harvest proposal: *Provided,* That such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm; and

"(v) such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.

"(h)(1) In carrying out the purposes of subsection (g) of this section, the Secretary of Agriculture shall appoint a committee of scientists who are not officers or employees of the Forest Service. The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted. The committee shall terminate upon promulgation of the regulation, but the Secretary may, from time to time, appoint similar committees when consid-

ering revisions of the regulations. The views of the committees shall be included in the public information supplied when the regulations are proposed for adoption.

"(2) Clerical and technical assistance, as may be necessary to discharge the duties of the committee, shall be provided from the personnel of the Department of Agriculture.

"(3) While attending meetings of the committee, the members shall be entitled to receive compensation at a rate of $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(i) Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.

"(j) Land management plans and revisions shall become effective thirty days after completion of public participation and publication of notification by the Secretary as required under section 6(d) of this Act.

"(k) In developing land management plans pursuant to this Act, the Secretary shall identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary, and shall assure that, except for salvage sales or sales necessitated to protect other multiple-use values, no timber harvesting shall occur on such lands for a period of 10 years. Lands once identified as unsuitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values. The Secretary shall review his decision to classify these lands as not suited for timber production at least every 10 years and shall return these lands to timber production whenever he determines that conditions have changed so that they have become suitable for timber production.

"(l) The Secretary shall—

"(1) formulate and implement, as soon as practicable, a process for estimating long-terms costs and benefits to support the program evaluation requirements of this Act. This process shall include requirements to provide information on a representative sample basis of estimated expenditures associated with the reforestation, timber stand improvement, and sale of timber from the National Forest System, and shall provide a comparison of these expenditures to the return to the Government resulting from the sale of timber; and

"(2) include a summary of data and findings resulting from these estimates as a part of the annual report required pursuant to section 8(c) of this Act, including an identification on a representative sample basis of those advertised timber sales made below the estimated expenditures for such timber as determined by the above cost process; and

"(m) The Secretary shall establish—

"(1) standards to insure that, prior to harvest, stands of trees throughout the National Forest System shall generally have reached the culmination of mean annual increment of growth (calculated on the basis of cubic measurement or other methods of calculation at the discretion of the Secretary): *Provided,* That these standards shall not preclude the use of sound silvicultural practices, such as thinning or other stand improvement measures: *Provided further,* That these standards shall not preclude the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack; and

"(2) exceptions to these standards for the harvest of particular species of trees in management units after consideration has been given to the multiple uses of the forest including, but not limited to, recreation, wildlife habitat, and range and after completion of public participation processes utilizing the procedures of subsection (d) of this section.".

NATIONAL PARTICIPATION

SEC. 7. Section 8 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended—

(a) by striking out "sixty" in the second sentence of subsection (a) and inserting in lieu thereof the word "ninety"; and by striking out "sixty-day period" in the third sentence of subsection (a) and inserting in lieu thereof "ninety-day period"; and

(b) by adding a new sentence at the end of subsection (c) as follows: "With regard to the research component of the program, the report shall include, but not be limited to, a description of the status of major research programs, significant findings, and how these findings will be applied in National Forest System management.".

TRANSPORTATION SYSTEM

SEC. 8. Section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by inserting "(a)" immediately before the words "The Congress" and inserting at the end thereof new subsections (b) and (c) as follows:

"(b) Unless the necessity for a permanent road is set forth in the forest development road system plan, any road constructed on land of the National Forest System in connection with a timber contract or other permit or lease shall be designed with the goal of reestablishing vegetative cover on the roadway and areas where the vegetative cover has been disturbed by the construction of the road, within ten years after the termination of the contract, permit, or lease either through artificial or natural means. Such action shall be taken unless it is later determined that the road is needed for use as a part of the National Forest Transportation System.

"(c) Roads constructed on National Forest System lands shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources.".

NATIONAL FOREST SYSTEM

SEC. 9. Section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by adding at the end thereof the following new sentence: "Notwithstanding the provisions of the Act of June 4, 1897 (30 Stat. 34; 16 U.S.C. 473), no land now or hereafter reserved or withdrawn from the public domain as national forests pursuant to the Act of March 3, 1891 (26 Stat. 1103; 16 U.S.C. 471), or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an act of Congress.".

RENEWABLE RESOURCES

SEC. 10. Section 12 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by striking out the period at the end of that section and inserting in lieu thereof the following: "and on the date of enactment of any legislation amendatory or supplemetary thereto.".

LIMITATIONS ON TIMBER REMOVAL; PUBLIC PARTICIPATION AND ADVISORY BOARDS; REGULATIONS; SEVERABILITY

SEC. 11. The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended by adding at the end thereof new sections 13 through 16 as follows:

"SEC. 13. LIMITATIONS ON TIMBER REMOVAL.—(a) The Secretary of Agriculture shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis: *Provided,* That in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established: *Provided further,* That any such planned departure must be consistent with the multiple-use management objectives of the land management plan. Plans for variations in the allowable sale quantity must be made with public participation as required by section 6(d) of this Act. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section in the case of any national forest so long as the average sale quantities of timber from such national forest over the decade covered by the plan do not exceed such quantity limitation. In those cases where a forest has less than two hundred thousand acres of commercial forest land, the Secretary may use two or more forests for purposes of determining the sustained yield.

"(b) Nothing in subsection (a) of this section shall prohibit the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. The Secretary may either substitute such timber for timber that would otherwise be sold under the plan or, if not feasible, sell such timber over and above the plan volume.

"SEC. 14. PUBLIC PARTICIPATION AND ADVISORY BOARDS.—(a) In exercising his authorities under this Act and other laws applicable to the Forest Service, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

"(b) In providing for public participation in the planning for and management of the National Forest System, the Secretary, pursuant to the Federal Advisory Committee Act (86 Stat. 770) and other applicable law, shall establish and consult such advisory boards as he deems necessary to secure full information and advice on the execution of his responsibilities. The membership of such boards shall be representative of a cross section of groups interested in the planning for and management of the National Forest System and the various types of use and enjoyment of the lands thereof.".

"SEC. 15. REGULATIONS.—The Secretary of Agriculture shall prescribe such regulations as he determines necessary and desirable to carry out the provisions of this Act.

"SEC. 16. SEVERABILITY.—If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.".

CONFORMING AMENDMENTS TO THE FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING ACT OF 1974

SEC. 12. The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended as follows:

(a) Section 6(a), as redesignated by section 2 of this Act, is amended by striking out "section 3" and inserting in lieu thereof "section 4".

(b) Section 8, as redesignated by section 2 of

this Act, is amended—

(1) by striking out "section 2" and "section 3" in the first sentence of subsection (a) and inserting in lieu thereof "section 3" and "section 4", respectively;

(2) by striking out "section 3" in subsection (c) and inserting in lieu thereof "section 4"; and

(3) by striking out "section 3" in the first sentence of subsection (d) and inserting in lieu thereof "section 4".

* * * * *

TIMBER SALES ON NATIONAL FOREST SYSTEM LANDS

SEC. 14. (a) For the purpose of achieving the policies set forth in the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528–531) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476; 16 U.S.C. 1601–1610), the Secretary of Agriculture, under such rules and regulations as he may prescribe, may sell, at not less than appraised value, trees, portions of trees, or forest products located on National Forest System lands.

(b) All advertised timber sales shall be designated on maps, and a prospectus shall be available to the public and interested potential bidders.

(c) The length and other terms of the contract shall be designed to promote orderly harvesting consistent with the principles set out in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended. Unless there is a finding by the Secretary of Agriculture that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result, sales contracts shall be for a period not to exceed ten years: *Provided,* That such period may be adjusted at the discretion of the Secretary to provide additional time due to time delays caused by an act of an agent of the United States or by other circumstances beyond the control of the purchaser. The Secretary shall require the purchaser to file as soon as practicable after execution of a contract for any advertised sale with a term of two years or more, a plan of operation, which shall be subject to concurrence by the Secretary. The Secretary shall not extend any contract period with an original term of two years or more unless he finds (A) that the purchaser has diligently performed in accordance with an approved plan of operation or (B) that the substantial overriding public interest justifies the extension.

(d) The Secretary of Agriculture shall advertise all sales unless he determines that extraordinary conditions exist, as defined by regulation, or that the appraised value of the sale is less than $10,000. If, upon proper offering, no satisfactory bid is received for a sale, or the bidder fails to complete the purchase, the sale may be offered and sold without further advertisement.

(e) The Secretary of Agriculture shall take such action as he may deem appropriate to obviate collusive practices in bidding for trees, portions of trees, or forest products from National Forest System lands, including but not limited to—

(1) establishing adequate monitoring systems to promptly identify patterns of noncompetitive bidding;

(2) requiring sealed bidding on all sales except where the Secretary determines otherwise by regulation; and

(3) requiring that a report of instances of such collusive practices or patterns of noncompetitive bidding be submitted to the Attorney General of the United States with any and all supporting data.

(f) The Secretary of Agriculture, under such rules and regulations as he may prescribe, is authorized to dispose of, by sale or otherwise, trees, portions of trees, or other forest products related to research and demonstration projects.

(g) Designation, marking when necessary, and supervision of harvesting of trees, portions of trees, or forest products shall be conducted by persons employed by the Secretary of Agriculture. Such persons shall have no personal interest in the purchase or harvest of such product and not be directly in the employment of the purchaser thereof.

(h) The Secretary of Agriculture shall develop utilization standards, methods of measurement, and harvesting practices for the removal of trees, portions of trees, or forest products to provide for the optimum practical use of the wood material. Such standards, methods, and practices shall reflect consideration of opportunities to promote more effective wood utilization, regional conditions, and species characteristics and shall be compatible with multiple use resource management objectives in the affected area. To accomplish the purpose of this subsection in situations involving salvage of insect-infested, dead, damaged, or down timber, and to remove associated trees for stand improvement, the Secretary is authorized to require the purchasers of such timber to make monetary deposits, as a part of the payment for the timber, to be deposited in a designated fund from which sums are to be used to cover the cost to the United States for design, engineering, and supervision of the construction of needed roads and the cost for Forest Service sale preparation and supervision of the harvesting of such timber. Deposits of money pursuant to this subsection are to be available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided,* That such deposits shall not be considered as moneys received from the national forests within the meaning of sections 500 and 501 of title 16, United States Code: *And provided further,* That sums found to be in excess of the cost of accomplishing the purposes for which deposited on any national forest shall be transferred to miscellaneous receipts in the Treasury of the United States.

(i) (1) For sales of timber which include a provision for purchaser credit for construction of permanent roads with an estimated cost in excess of $20,000, the Secretary of Agriculture shall promulgate regulations requiring that the notice of sale

afford timber purchasers qualifying as "small business concerns" under the Small Business Act, as amended, and the regulations issued thereunder, an estimate of the cost and the right, when submitting a bid, to elect that the Secretary build the proposed road: *Provided*, That the provisions of this subsection shall not apply to sales of timber on National Forest System lands in the State of Alaska.

(2) If the purchaser makes such an election, the price subsequently paid for the timber shall include all of th estimated cost of the road. In the notice of sale, the Secretary of Agriculture shall set a date when such road shall be completed which shall be applicable to either construction by the purchaser or the Secretary, depending on the election. To accomplish requested work, the Secretary is authorized to use from any receipts from the sale of timber a sum equal to the estimate for timber purchaser credits, and such additional sums as may be appropriated for the construction of roads, such funds to be available until expended, to construct a road that meets the standards specified in the notice of sale.

(3) The provisions of this subsection shall become effective on October 1, 1976.

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PLAN FOR CONTROL OF DUTCH ELM DISEASE

SEC. 20. The Secretary of Agriculture, in consultation with officials of both the States and political subdivisions thereof, shall conduct a study of the incidence of Dutch elm disease and evaluate methods for controlling the spread of such disease. The Secretary shall prepare and submit to the President and both Houses of the Congress on or before March 1, 1977, a report which includes—

(1) the results of such study;

(2) plans for further research into the control of Dutch elm disease; and

(3) an action plan which includes a program of outreach and public information about the disease, and recommendations for controlling the spread of the disease.

SEVERABILITY

SEC. 21. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the appplication of such provision to other persons and circumstances shall not be affected thereby.

13. Forestry Research Programs

16 U.S.C. 582a, 582a–1, 582a–6

§ 582a. Congressional findings.

It is recognized that research in forestry is the driving force behind progress in developing and utilizing the resources of the Nation's forest and related rangelands. The production, protection, and utilization of the forest resources depend on strong technological advances and continuing development of the knowledge necessary to increase the efficiency of forestry practices and to extend the benefits that flow from forest and related rangelands. It is recognized that the total forestry research efforts of the several State colleges and universities and of the Federal Government are more fully effective if there is close coordination between such programs, and it is further recognized that forestry schools are especially vital in the training of research workers in forestry. (Pub. L. 87–788, § 1, Oct. 10, 1962, 76 Stat. 806.)

§ 582a–1. Cooperation by Secretary of Agriculture with States; assistance: plans, eligible institutions and amount.

In order to promote research in forestry, the Secretary of Agriculture is authorized to cooperate with the several States for the purpose of encouraging and assisting them in carrying out programs of forestry research.

Such assistance shall be in accordance with plans to be agreed upon in advance by the Secretary and (a) land-grant colleges or agricultural experiment stations established under the Morrill Act of July 2, 1862, as amended, and the Hatch Act of March 2, 1887, as amended, and (b) other State-supported colleges and universities offering graduate training in the sciences basic to forestry and having a forestry school; however, an appropriate State representative designated by the State's Governor shall, in any agreement drawn up with the Secretary of Agriculture for the purposes of sections 582a to 582a–7 of this title, certify those eligible institutions of the State which will qualify for assistance and shall determine the proportionate amounts of assistance to be extended these certified institutions. (Pub. L. 87–788, § 2, Oct. 10, 1962, 76 Stat. 806.)

§ 582a–6. Scope of forestry research.

The term "forestry research" as used in sections 582a to 582a–7 of this title shall include investigations relating to: (1) Reforestation and management of land for the production of crops of timber and other related products of the forest; (2) management of forest and related watershed lands to improve conditions of waterflow and to protect resources against floods and erosion; (3) management of forest and related rangeland for production of forage for domestic livestock and game and improvement of food and habitat for wildlife; (4) management of forest lands for outdoor recreation; (5) protection of forest land and resources against fire, insects, diseases, or other destructive agents; (6) utilization of wood and other forest products; (7) de-

velopment of sound policies for the management of forest lands and the harvesting and marketing of forest products; and (8) such other studies as may be necessary to obtain the fullest and most effective use of forest resources. (Pub. L. 87–788, § 7, Oct. 10, 1962, 76 Stat. 807.)

14. General Criminal Provisions Relating to Fish and Wildlife

18 U.S.C. 41–44, 47, 1165, 3054, 3112

Sec.

AMENDMENTS

1959—Pub. L. 86–234, § 1(b), Sept. 8, 1959, 73 Stat. 470, added item 47.

1956—Act Aug. 1, 1956, ch. 825, § 2 (b), 70 Stat. 798, substituted the heading "Chapter 3.—Animals, Birds, Fish, and Plants" for "Chapter 3.—Animals, Birds, and Fish" and added item 46.

§ 41. Hunting, fishing, trapping; disturbance or injury on wildlife refuges.

Whoever, except in compliance with rules and regulations promulgated by authority of law, hunts, traps, captures, willfully disturbs or kills any bird, fish, or wild animal of any kind whatever, or takes or destroys the eggs or nest of any such bird or fish, on any lands or waters which are set apart or reserved as sanctuaries, refuges or breeding grounds for such birds, fish, or animals under any law of the United States or willfully injures, molests, or destroys any property of the United States on any such lands or waters, shall be fined not more than $500 or imprisoned not more than six months, or both. (June 25, 1948, ch. 645, 62 Stat. 686.)

§ 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations.

(a)(1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species Herpestes auropunctatus; of the species of so-called "flying foxes" or fruit bats of the genus Pteropus; and such other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or **the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish (including mollusks and crustacea) amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act, insofar as such importation is subject to regulation under that Act.**

(2) As used in this subsection, the term "wild" relates to any creatures that, whether or not raised in captivity, normally are found in a wild state; and the terms "wildlife" and "wildlife resources" include those resources that comprise wild mammals, wild birds, fish (including mollusks and crustacea), and all other classes of wild creatures whatsoever, and all types of aquatic and land vegetation upon which such wildlife resources are dependent.

(3) Notwithstanding the foregoing, the Secretary of the Interior, when he finds that there has been a proper showing of responsibility and continued protection of the public interest and health, shall permit the importation for zoological, educational, medical, and scientific purposes of any mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles, or the offspring or eggs thereof, where such importation would be prohibited otherwise by or pursuant to this Act, and this Act shall not restrict importations by Federal agencies for their own use.

(4) Nothing in this subsection shall restrict the importation of dead natural-history specimens for museums or for scientific collections, or the importation of domesticated canaries, parrots (including all other species of psittacine birds), or such other cage birds as the Secretary of the Interior may designate.

(5) The Secretary of the Treasury and the Secretary of the Interior shall enforce the provisions of this subsection, including any regulations issued hereunder, and, if requested by the Secretary of the Interior, the Secretary of the Treasury may require the furnishing of an appropriate bond when desirable to insure compliance with such provisions.

(b) Whoever violates this section, or any regulation issued pursuant thereto, shall be fined not more than $500 or imprisoned not more than six months, or both.

(c) The Secretary of the Treasury shall prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions, and it shall be unlawful for any person, including any importer, knowingly to cause or permit any wild animal or bird to be transported to the United States, or any Territory or district thereof,

[1] Catchline amended by Pub. L. 86–702, Sept. 2, 1960, 74 Stat. 754, without amending analysis.

[2] So in original. Does not conform to section catchline.

under inhumane or unhealthful conditions or in violation of such requirements. In any criminal prosecution for violation of this subsection and in any administrative proceeding for the suspension of the issuance of further permits—

(1) the condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

(2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection.

(June 25, 1948, ch. 645, 62 Stat. 687; May 24, 1949, ch. 139, § 2, 63 Stat. 89; Sept. 2, 1960, Pub. L. 86-702, § 1, 74 Stat. 753.)

AMENDMENTS

1960—Pub. L. 86-702 substituted "Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia and reptiles; permits, specimens for museums; regulations" for "Importation of injurious animals and birds; permits; specimens for museums" in the catchline.

Subsec. (a)(1). Pub. L. 86-702 designated first sentence of former subsec. (a) as subsec. (a)(1), prohibited importation into the Commonwealth of Puerto Rico or any possession of the United States and shipments between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, described the mongoose and flying foxes by their scientific names, extended the provisions prohibiting importation or shipment to include wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or their eggs or offspring, empowered the Secretary to prohibit importation or shipment if injurious to human beings, forestry, or to wildlife or wildlife resources, required prompt exportation or destruction at the expense of the importer or consignee, provided that this section shall not be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act and that it shall not authorize any action with respect to the importation of plant pests, and deleted provisions which required destruction of prohibited birds and animals or their return at the expense of the owner, and which prohibited the importation of the English sparrow and the starling.

Subsecs. (a) (2), (3). Pub. L. 86-702 added subsecs. (a) (2) and (a) (3).

Subsec. (a) (4). Pub. L. 86-702 designated second sentence of former subsec. (a) as subsec. (a)(4), limited importation of natural-history specimens to dead ones, and included all species of psittacine birds.

Subsec. (a)(5). Pub. L. 86-702 designated third sentence of former subsec. (a) as subsec. (a)(5), authorized enforcement by the Secretary of the Interior, and permitted the Secretary of the Treasury, if requested by the Secretary of the Interior, to require the furnishing of a bond.

Subsec. (b). Pub. L. 86-702 included violations of regulations.

1949—Subsec. (a). Act May 24, 1949, made section applicable to any Territory or district thereof as well as to the United States, and changed the phraseology.

Subsec. (b). Act May 24, 1949, reenacted subsec. (b) without change.

Subsec. (c). Act May 24, 1949, added subsec. (c).

§ 43. Transportation of wildlife taken in violation of State, National, or foreign laws; receipt; making false records.

(a) Any person who—

(1) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold in interstate or foreign commerce any wildlife taken, transported, or sold in any manner in violation of any law or regulation of any State or foreign country; or

(b) Any person who—

(1) sells or causes to be sold any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) sells or causes to be sold in interstate or foreign commerce any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any law or regulation of a State or a foreign country, or

(3) having purchased or received wildlife imported from any foreign country or shipped, transported, or carried in interstate commerce, makes or causes to be made any false record, account, label, or identification thereof, or

(4) receives, acquires, or purchases for commercial or noncommercial purposes any wildlife—

(A) taken, transported, or sold in violation of any law or regulation of any State or foreign country and delivered, carried, transported, or shipped by any means or method in interstate or foreign commerce, or

(B) taken, transported, or sold in violation of any Act of Congress or regulation issued thereunder, or

(5) imports from Mexico to any State, or exports from any State to Mexico, any game mammal, dead or alive, or part or product thereof, except under permit or other authorization of the Secretary or, in accordance with any regulations prescribed by him, having due regard to the requirements of the Migratory Birds and Game Mammals Treaty with Mexico and the laws of the United States forbidding importation of certain live mammals injurious to agriculture and horticulture;

shall be subject to the penalties prescribed in subsections (c) and (d) of this section.

(c)(1) Any person who knowingly violates, or who, in the exercise of due care, should know that he is violating, any provision of subsection (a) or (b) of this section may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to

institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

(2) Any employee authorized by the Secretary to enforce the provisions of this section, or any officer of the customs, shall have authority to execute any warrant to search for and seize any wildlife, product, property, or item used or possessed in violation of this section with respect to which a civil penalty may be assessed pursuant to paragraph (1) of this subsection. Such wildlife, product, property, or item so seized shall be held by such employee pending disposition of proceedings by the Secretary involving the assessment of a civil penalty pursuant to paragraph (1) of this subsection; except that the Secretary may, in lieu of holding such wildlife, product, property, or item, permit such person to post a bond or other surety satisfactory to the Secretary. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection for any nonwillful violation of this section, such wildlife, product, property, or item so seized may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate. The owner or consignee of any such wildlife, product, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. Whenever any wildlife, product, property, or item is seized pursuant to this subsection, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. If, with respect to any such wildlife, product, property, or item so seized, no action is commenced in any court of competent jurisdiction to obtain the forfeiture of such wildlife, product, property, or item within thirty days following the disposition of proceedings involving the assessment of a civil penalty, such wildlife, product, property, or item shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

(d) Any person who knowingly and willfully violates any provision of subsection (a) or (b) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

(e) Any wildlife or products thereof seized in connection with any knowing and willful violation of this section with respect to which a penalty may be imposed pursuant to subsection (d) shall, upon conviction of such violation, be forfeited to the Secretary to be disposed of by him in such manner as he deems appropriate. Any other property or item so seized may upon conviction, in the discretion of the court, be forfeited to the United States or otherwise disposed of. The owner or consignee of any such wildlife, product, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. If no conviction results from any such alleged violation, such wildlife, product, property or item so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (c) of this section.

(f) For the purpose of this section, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "person" means any individual, firm, corporation, association, or partnership;

(3) "wildlife" means any wild mammal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, egg, or offspring thereof, or the dead body or parts thereof, but does not include migratory birds for which protection is afforded under the Migratory Bird Treaty Act, as amended;

(4) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam; and

(5) "taken" means captured, killed, collected, or otherwise possessed.

(June 25, 1948, ch. 645, 62 Stat. 687; Sept. 2, 1960, Pub. L. 86-702, § 2, 74 Stat. 754; Dec. 5, 1969, Pub. L. 91-135, § 7(a), 83 Stat. 279.)

AMENDMENTS

1969—Pub. L. 91-135, in rewriting existing provisions to clarify the nature of the violations, to refer to commercial and noncommercial purposes and interstate or foreign commerce, and to adopt the form descriptive of violations of acts of Congress and of laws of States or foreign countries, substituted subsecs. (a)-(f) for five prior pars.:

Subsec. (a) incorporating provisions of former first par., amended to include commission of offense as a principal;

Subsec. (b)(1) and (2) constituting new provisions based on provisions of former first par., drafted in language of subsec. (a);

Subsec. (b)(3) incorporating provisions of former third par., substituting "purchased or received" for "acquired";

Subsec. (b)(4)(A) and (B) incorporating provisions of former first and second pars.;

Subsec. (b)(5) incorporating provisions of former fourth par., amended to have due regard for requirements of the Migratory Birds and Game Mammals Treaty with Mexico and Federal laws forbidding importation of certain live mammals injurious to agriculture and horticulture, and to omit need for approval of regulations by the President;

Subsec. (c) constituting new provisions for administrative assessment of a maximum civil penalty of $5,000 for each violation, where the person knowingly violates or should know that he is committing a violation: separate offenses, notice and hearing, compromises; civil actions: jurisdiction and venue, trial de novo; execution of search and seizure warrants; custody of articles pending disposition of proceedings; posting bond or other surety; forfeitures: notification of seizure, expeditious disposition of civil penalty proceedings, and return of property to owners; former provisions of fifth par. providing in part only for a criminal penalty by way of $500 fine or six months imprisonment or both;

Subsec. (d) substituting criminal penalty of $10,000 fine or one year imprisonment or both for prior provisions of fifth par. for a $500 fine or six months imprisonment or both;

Subsec. (e) incorporating the provisions of former fifth par. for forfeiture of wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, amended to include forfeitures for criminal violations, notification

of seizure, and return of property to owner;

Subsec. (f), incorporating the substance of existing provisions in pars. (3)–(5); extending coverage in par. (3) beyond wild animals and wild life to include any amphibian, reptile, mollusk, or crustacean, or any part, egg, or offspring thereof, or the dead body or parts thereof, but to exclude migratory birds protected by the Migratory Bird Treaty, as amended; excluding in par. (4) reference to "territory" and substituting "American Samoa, the Virgin Islands, and Guam" for "possession of the United States"; and using in par. (5) the generic "taken" for previously synonymous terms "captured, killed, collected, or otherwise possessed".

1960—Pub. L. 86–702 substituted "Transportation of wildlife taken in violation of State, National, or foreign laws; receipt; making false records" for "Transportation or importation in violation of State, National, or foreign laws" in the catchline, and in the text included shipping by any means, enumerated the forbidden areas as any State, territory, the District of Columbia, Puerto Rico, possessions, or foreign countries, specified mammals or birds of any kind, and their offspring, extended the prohibitions to those imposed by regulations issued pursuant to federal or state law, further included those who receive, acquire, or purchase, knowingly, such prohibited objects, and forbade false labeling or identification of such objects.

§ 44. Marking packages or containers.

Whoever ships, transports, carries, brings or conveys in interstate or foreign commerce any package containing any wild mammal, wild bird, amphibian, or reptile, or any mollusk or crustacean, or the dead body or parts of eggs thereof, without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee and with an accurate statement showing the contents by number and kind; or

Whoever ships, transports, carries, brings or conveys in interstate commerce, any package containing migratory birds included in any convention to which the United States is a party, without marking, labeling, or tagging such package as prescribed in such convention, or Act of Congress, or regulation thereunder; or

Whoever ships, transports, carries, brings or conveys in interstate commerce any package containing furs, hides, or skins of wild animals without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee—

Shall be fined not more than $500 or imprisoned not more than six months, or both; and the shipment shall be forfeited.

In any case where the marking, labeling, or tagging of a package under this section indicating in any way the contents thereof would create a significant possibility of theft of the package or its contents, the Secretary of the Interior may, upon request of the owner thereof or his agent or by regulation, provide some other reasonable means of notifying appropriate authorities of the contents of such packages. (June 25, 1948, ch. 645, 62 Stat. 687; Dec. 5, 1969, Pub. L. 91–135, § 8, 83 Stat. 281.)

AMENDMENTS

1969—Pub. L. 91–135 extended the protection of the first par., substituting "any wild mammal, wild bird, amphibian, or reptile, or any mollusk or crustacean, or the dead body or parts or eggs thereof" for "wild animals or birds, or the dead bodies or parts thereof," and authorized the Secretary to provide some other reasonable means for persons to notify the appropriate authorities of the contents of packages when it appears that marking, labeling, or tagging of such packages would create a significant possibility of theft of the packages or its contents, respectively.

§ 47. Use of aircraft or motor vehicles to hunt certain wild horses or burros; pollution of watering holes.

(a) Whoever uses an aircraft or a motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare, colt, or burro running at large on any of the public land or ranges shall be fined not more than $500, or imprisoned not more than six months, or both.

(b) Whoever pollutes or causes the pollution of any watering hole on any of the public land or ranges for the purpose of trapping, killing, wounding, or maiming any of the animals referred to in subsection (a) of this section shall be fined not more than $500, or imprisoned not more than six months, or both.

(c) As used in subsection (a) of this section—

(1) The term "aircraft" means any contrivance used for flight in the air; and

(2) The term "motor vehicle" includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land.

(Added Pub. L. 86–234, § 1(a), Sept. 8, 1959, 73 Stat. 470.)

§ 1165. Hunting, trapping, or fishing on Indian land.

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than $200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited. (Added Pub. L. 86–634, § 2, July 12, 1960, 74 Stat. 469.)

§ 3054. Officer's powers involving animals and birds.

Any employee authorized by the Secretary of the Interior to enforce sections 42, 43, and 44 of this title, and any officer of the customs, may arrest any person who violates section 42 or 44, or who such employee or officer of the customs has probable cause to believe is knowingly and willfully violating section 43, in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of said sections. (June 25, 1948, ch. 645, 62 Stat. 817; Dec. 5, 1969, Pub. L. 91–135, § 7(b), 83 Stat. 281.)

AMENDMENT

1969—Pub. L. 91–135 provided for enforcement of section 42 of this title and substituted "any person who violates section 42 or 44, or who such employee or officer of the customs has probable cause to believe is knowingly and willfully violating section 43," for "any person violating said sections".

§ 3112. Search warrants for seizure of animals, birds or eggs.

Any employee authorized by the Secretary of the Interior to enforce sections 42, 43, and 44 of this title, and any officer of the customs, shall have authority to execute any warrant to search for and seize any wildlife, product, property, or item used or possessed in connection with a violation of section 42 or 44, or in connection with a knowing and willful violation of section 43, and any such wildlife, product, property, or item so seized shall be held by him or by the United States marshal pending disposition thereof by the court. (June 25, 1948, ch. 645, 62 Stat. 820; Dec. 5, 1969, Pub. L. 91–135, § 7(c), 83 Stat. 281.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., § 393a (June 15, 1935, ch. 261, title II, § 202, 49 Stat. 381; Reorg. Plan No. II, § 4 (f), 4 F. R. 2731, 53 Stat. 1433).

Section 393a of title 18, U. S. C., 1940 ed., was incorporated in this section and sections 43, 44, and 3054 of this title.

Only such changes of phraseology were made as were necessary to make this section conform with Rule 41 of the Federal Rules of Criminal Procedure.

AMENDMENTS

1969—Pub. L. 91–135 provided for enforcement of section 42 of this title and substituted "property used or possessed in connection with a violation of section 42 or 44, or in connection with a knowing and willful violation of section 43," for "property used or possessed in violation of said sections".

15. Importation of Wild Mammals and Birds

19 U.S.C. 1527

§ 1527. Importation of wild mammals and birds in violation of foreign law.

(a) Importation prohibited.

If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird, alive or dead, or restrict the exportation to the United States of any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the expiration of ninety days after June 17, 1930, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part or product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

(b) Forfeiture.

Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivision shall be subject to seizure and forfeiture under the customs laws. Any such article so forfeited may, in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe, be placed with the departments or bureaus of the Federal or State Governments, or with societies or museums, for exhibition or scientific or educational purposes, or destroyed, or (except in the case of heads or horns of wild mammals) sold in the manner provided by law.

(c) Section not to apply in certain cases.

The provisions of this section shall not apply in the case of—

(1) Prohibited importations.

Articles the importation of which is prohibited under the provisions of this chapter, or of section 391 of Title 18, or of any other law;

(2) Scientific or educational purposes.

Wild mammals or birds, alive or dead, or parts or products thereof, whether raw or manufactured, imported for scientific or educational purposes;

(3) Certain migratory game birds.

Migratory game birds (for which an open season is provided by the laws of the United States and any foreign country which is a party to a treaty with the United States, in effect on the date of importation, relating to the protection of such migratory game birds) brought into the United States by bona fide sportsmen returning from hunting trips in such country, if at the time of importation the possession of such birds is not prohibited by the laws of such country or of the United States.

(June 17, 1930, ch. 497, title IV, § 527, 46 Stat. 741.)

16. Intergovernmental Coordination—Grants

42 U.S.C. 4201–4244

SUBCHAPTER I.—GENERAL PROVISIONS

SUBCHAPTER II.—GRANTS-IN-AID TO THE STATES; IMPROVED ADMINISTRATION

SUBCHAPTER I.—GENERAL PROVISIONS

§ 4201. Definitions.

When used in this chapter—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government and any wholly owned Government corporation.

(2) The term "State" means any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State.

(3) The term "political subdivision" or "local government" means a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or pursuant to State law.

(4) "Unit of general local government" means any city, county, town, parish, village, or other general purpose political subdivision of a State.

(5) "Special-purpose unit of local government" means any special district, public-purpose corporation, or other strictly limited-purpose political subdivision of a State, but shall not include a school district.

(6) The term "grant" or "grant-in-aid" means money, or property provided in lieu of money, paid or furnished by the United States under a fixed annual or aggregate authorization—

(A) to a State; or

(B) to a political subdivision of a State; or

(C) to a beneficiary under a plan or program, administered by a State or a political subdivision of a State, which is subject to approval by a Federal agency;

if such authorization either (i) requires the States or political subdivisions to expend non-Federal funds as a condition for the receipt of money or property from the United States; or (ii) specifies directly, or establishes by means of a formula, the amounts which may be paid or furnished to States or political subdivisions, or the amounts to be allotted for use in each of the States by the States, political subdivisions, or other beneficiaries. The term also includes money, or property provided in lieu of money, paid and furnished by the United States to any community action agency under the Economic Opportunity Act of 1964, as amended. The term does not include (1) shared revenues; (2) payments of taxes; (3) payments in lieu of taxes; (4) loans or repayable advances; (5) surplus property or surplus agricultural commodities furnished as such; (6) payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private; or (7) payments to States or political subdivisions as full reimbursement for the costs incurred in paying benefits or furnishing services to persons entitled thereto under Federal laws.

(7) The term "Federal assistance", "Federal financial assistance", "Federal assistance programs", or "federally assisted programs", means programs that provide assistance through grant or contractual arrangements, and includes technical assistance programs or programs providing assistance in the form of loans, loan guarantees, or insurance. The term does not include any annual payment by the United States to the District of Columbia authorized by article VI of the District of Columbia Revenue Act of 1947 (D.C. Code secs. 47–2501a and 47–2501b).

(8) "Specialized or technical services" means statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and any other similar service functions which any department or agency of the executive branch of the Federal Government is especially equipped and authorized by law to perform.

(9) "Comprehensive planning" includes the following, to the extent directly related to area needs or needs of a unit of general local government: (A) preparation, as a guide for governmental policies and action, of general plans with respect to (i) the pattern and intensity of land use, (ii) the provision of public facilities (including transportation facilities) and other government services, and (iii) the effective development and utilization of human and natural resources; (B) long-range physical and fiscal plans for such action; (C) programing of capital improvements and other major expenditures, based on a determination of relative urgency, together with definitive financing plans for such expenditures in the earlier years of the program; (D) coordination of all related plans and activities of the State and local governments and agencies concerned; and (E) preparation of regulatory and administrative measures in support of the foregoing.

(10) The term "head of a Federal agency" or "head of a State agency" includes a duly designated delegate of such agency head. (Pub. L. 90–577, title I, §§ 101—110, Oct. 16, 1968, 82 Stat. 1098—1101.)

SUBCHAPTER II.—GRANTS-IN-AID TO THE STATES; IMPROVED ADMINISTRATION

§ 4211. Full information on funds received.

Any department or agency of the United States Government which administers a program of grants-in-aid to any of the State governments of the United States or to their political subdivisions shall, upon request, notify in writing the Governor, the State legislature, or other official designated by either, of the purpose and amounts of actual grants-in-aid to the State or to its political subdivisions. In each instance, a copy of requested information shall be furnished the State legislature or the Governor depending upon the original request for such data. (Pub. L. 90–577, title II, § 201, Oct. 16, 1968, 82 Stat. 1101.)

§ 4212. Deposit of grants-in-aid.

No grant-in-aid to a State shall be required by Federal law or administrative regulation to be deposited in a separate bank account apart from other funds administered by the State. All Federal grant-in-aid funds made available to the States shall be properly accounted for as Federal funds in the accounts of the State. In each case the State agency concerned shall render regular authenticated reports to the appropriate Federal agency covering the status and the application of the funds, the liabilities and obligations on hand, and such other facts as may be required by said Federal agency. The head of the Federal agency and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to the grant-in-aid received by the States. (Pub. L. 90–577, title II, § 202, Oct. 16, 1968, 82 Stat. 1101.)

§ 4213. Scheduling of Federal transfers to the States.

Heads of Federal departments and agencies responsible for administering grant-in-aid programs shall schedule the transfer of grant-in-aid funds consistent with program purposes and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by a State, whether such disbursement occurs prior to or subsequent to such transfer of funds, or subsequent to such transfer of funds.[1] States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes. (Pub. L. 90–577, title II, § 203, Oct. 16, 1968, 82 Stat. 1101.)

§ 4214. Eligible State agency.

Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: *Provided*, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements. (Pub. L. 90–577, title II, § 204, Oct. 16, 1968, 82 Stat. 1101.)

[1] So in original.

SUBCHAPTER III.—SPECIAL OR TECHNICAL SERVICES PROVIDED FOR STATE AND LOCAL UNITS OF GOVERNMENT BY FEDERAL DEPARTMENTS AND AGENCIES

§ 4221. Statement of purpose.

It is the purpose of this subchapter to encourage intergovernmental cooperation in the conduct of specialized or technical services and provision of facilities essential to the administration of State or local governmental activities, many of which are nationwide in scope and financed in part by Federal funds; to enable State or local governments to avoid unnecessary duplication of special service functions; and to authorize all departments and agencies of the executive branch of the Federal Government which do not have such authority to provide reimbursable specialized or technical services to State and local governments. (Pub. L. 90–577, title III, § 301, Oct. 16, 1968, 82 Stat. 1102.)

§ 4222. Authority to provide service.

The head of any Federal department or agency is authorized within his discretion, upon written request from a State or political subdivision thereof, to provide specialized or technical services, upon payment, to the department or agency by the unit of government making the request, of salaries and all other identifiable direct or indirect costs of performing such services: *Provided, however*, That such services shall include only those which the Director of the Office of Management and Budget through rules and regulations determines Federal departments and agencies have special competence to provide. Such rules and regulations shall be consistent with and in furtherance of the Government's policy of relying on the private enterprise system to provide those services which are reasonably and expeditiously available through ordinary business channels. (Pub. L. 90–577, title III, § 302, Oct. 16, 1968, 82 Stat. 1102; 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2086.)

§ 4223. Reimbursement of appropriation.

All moneys received by any department or agency of the executive branch of the Federal Government, or any bureau or other administrative division thereof, in payment for furnishing specialized or technical services as authorized under section 4222 of this title shall be deposited to the credit of the principal ap-

propriation from which the cost of providing such services has been paid or is to be charged. (Pub. L. 90–577, title III, § 303, Oct. 16, 1968, 82 Stat. 1102.)

§ 4224. Reports to Congress.

The Secretary of any department or the administrative head of any agency of the executive branch of the Federal Government shall furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under the administration of this subchapter. (Pub. L. 90–577, title III, § 304, Oct. 16, 1968, 82 Stat. 1102.)

§ 4225. Reservation of existing authority.

This subchapter is in addition to and does not supersede any existing authority now possessed by any Federal department or agency with respect to furnishing services, whether on a reimbursable or nonreimbursable basis, to State and local units of government. (Pub. L. 90–577, title III, § 305, Oct. 16, 1968, 82 Stat. 1103.)

SUBCHAPTER IV.—DEVELOPMENT ASSISTANCE PROGRAMS; COORDINATED INTERGOVERNMENTAL POLICY AND ADMINISTRATION

§ 4231. Declaration of development assistance policy.

(a) The economic and social development of the Nation and the achievement of satisfactory levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time of rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of smaller communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. Such rules and regulations shall provide for full consideration of the concurrent achievement of the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between such objectives when they conflict:

(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

(2) Wise development and conservation of natural resources, including land, water, minerals, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

(b) All viewpoints—national, regional, State, and local—shall, to the extent possible, be fully considered and taken into account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(c) To the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including but not limited to housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(d) Each Federal department and agency administering a development assistance program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

(e) Insofar as possible, systematic planning required by individual Federal programs (such as highway constuction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning. (Pub. L. 90–577, title IV, § 401, Oct. 16, 1968, 82 Stat. 1103.)

§ 4232. Favoring units of general local government.

Where Federal law provides that both special-purpose units of local government and units of general local government are eligible to receive loans or grants-in-aid, heads of Federal departments and agencies shall, in the absence of substantial reasons to the contrary, make such loans or grants-in-aid to units of general local government rather than to special-purpose units of local government. (Pub. L. 90–577, title IV, § 402, Oct. 16, 1968, 82 Stat. 1104.)

§ 4233. Rules and regulations.

The Office of Management and Budget or such other agency as may be designated by the President is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this subchapter. (Pub. L. 90–577, title IV, § 403, Oct. 16, 1968, 82 Stat. 1104; 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2086.)

SUBCHAPTER V.—REVIEW OF FEDERAL GRANT-IN-AID PROGRAMS

§ 4241. Congressional review of grant-in-aid programs.

(a) Where any Act of Congress authorizes the making of grants-in-aid and no expiration date for such authority has been specified by law, then prior to the expiration of each period specified in subsection (b) of this section the Committees of the

Senate and the House having legislative jurisdiction over such grants-in-aid shall, separately or jointly, conduct studies of the program under which such grants-in-aid are made and advise their respective Houses of the results of their findings with special attention to—

(1) The extent to which the purposes for which the grants-in-aid are authorized have been met;

(2) The extent to which the objectives of such programs can be carried on without further financial assistance from the United States;

(3) Whether or not any changes in purpose, direction or administration of the original program, or in procedures and requirements applicable thereto, shall be made; and

(4) The extent to which such grant-in-aid programs are adequate to meet the growing and changing needs which they were designed to support.

(b) (1) A study of a grant-in-aid program to which subsection (a) of this section applies and which is authorized by an Act of Congress enacted before October 16, 1968, shall be conducted prior to the expiration of the fourth calendar year beginning after October 16, 1968, and thereafter prior to the expiration of the fourth calendar year following the year during which a study of such program was last conducted under this paragraph.

(2) A study of a grant-in-aid program to which subsection (a) of this section applies and which is authorized by an Act of Congress enacted after October 16, 1968, shall be conducted prior to the expiration of the fourth calendar year following the year of enactment of such Act, and prior to the expiration of each fourth calendar year thereafter. (Pub. L. 90–577, title VI, § 601, Oct. 16, 1968, 82 Stat. 1106.)

§ 4242. Studies by Comptroller General of Federal grant-in-aid programs; reports to Congress.

(a) Upon request of any committee having jurisdiction over a grant-in-aid program, the Comptroller General shall make a study of such program to determine among other relevant matters, the extent to which—

(1) such program conflicts with or duplicates other grant-in-aid programs; and

(2) more effective, efficient, economical, and uniform administration of such program can be achieved by changing certain requirements and procedures applicable thereto.

(b) In reviewing grant-in-aid programs the Comptroller General shall consider, among other relevant matters, and the budgetary, accounting, reporting and administrative procedures applicable to such programs. Reports on such studies, together with recommendations, shall be submitted by the Comptroller General to the Congress. Reports on expiring programs should, to the extent practicable, be submitted in the year prior to the date set for their expiration. (Pub. L. 90–577, title VI, § 602, Oct. 16, 1968, 82 Stat. 1107.)

§ 4243. Studies by Advisory Commission on Intergovernmental Relations; report to Congress.

Upon request of any committee having jurisdiction over a grant-in-aid program, the Advisory Commission on Intergovernmental Relations (established by Public Law 86–380, as amended) shall conduct studies of the intergovernmental relations aspects of such program including (1) the impact of such program, if any, on the structural organization of State and local governments and on Federal-State-local fiscal relations, and (2) the coordination of Federal administration of such program with State and local administration thereof, and shall report its findings and recommendations to such committee and to the Congress. (Pub. L. 90–577, title VI, § 603, Oct. 16, 1968, 82 Stat. 1107.)

§ 4244. Preservation of House and Senate committee jurisdiction.

Nothing in this chapter shall be construed to affect the jurisdiction of committees under the rules of the Senate and the House of Representatives. (Pub. L. 90–577, title VI, § 604, Oct. 16, 1968, 82 Stat. 1107.)

17. Land Conservation and Utilization by the Secretary of Agriculture to Protect Fish and Wildlife

7 U.S.C. 1010–1010a

(See Federal Assistance Resource Conservation and Development Projects under this title)

18. Military Easements for Rights-of-Way

10 U.S.C. 2668, 2671

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, to a State, Territory, Commonwealth, or possession, or political subdivision

thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

(1) railroad tracks;

(2) oil pipe lines;

(3) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines;

(4) canals;

(5) ditches;

(6) flumes;

(7) tunnels;

(8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;

(9) roads and streets; and

(10) any other purpose that he considers advisable, except a purpose covered by section 2669 of this title or by section 961 of title 43.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse for a two-year period; or

(3) abandonment.

(d) Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior. (Aug. 10, 1956, ch. 1041, 70A Stat. 150.)

10 U.S.C., § 2671. Military reservations and facilities: hunting, fishing, and trapping.

(a) The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State or Territory—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State or Territory in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State or Territory authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State or Territory, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) The Secretary of Defense shall prescribe regulations to carry out this section.

(c) Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a) (1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State or Territory in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) This section does not modify any rights granted by treaty or otherwise to any Indian tribe or to the members thereof. (Added Pub. L 85–337, § 4 (1), Feb. 28, 1958, 72 Stat. 29.)

19. Military Public Land Withdrawals

43 U.S.C. 155–158

§ 155. Withdrawal, reservation, or restriction of public lands for defense purposes; definition; exception.

Notwithstanding any other provisions of law, except in time of war or national emergency hereafter declared by the President or the Congress, on and after February 28, 1958 the provisions hereof shall apply to the withdrawal and reservation for, restriction of, and utilization by, the Department of Defense for defense purposes of the public lands of the United States, including public lands in the Territories of Alaska and Hawaii: *Provided*, That—

(1) for the purposes of this Act, the term "public lands" shall be deemed to include, without limiting the meaning thereof, Federal lands and waters of the Outer Continental Shelf, as defined in section 1331 of this title, and Federal lands and waters off the coast of the Territories of Alaska and Hawaii;

(2) nothing in this Act shall be deemed to be applicable to the withdrawal or reservation of public lands specifically as naval petroleum, naval oil shale, or naval coal reserves;

(3) nothing in this Act shall be deemed to be applicable to the warning areas over the Federal lands and waters of the Outer Continental Shelf and Federal lands and waters off the coast of the Territory of Alaska reserved for use of the military departments prior to the enactment of the Outer Continental Shelf Lands Act; and

(4) nothing in this section, section 156, or section 157 of this title shall be deemed to be applicable either to those reservations or withdrawals

which expired due to the ending of the unlimited national emergency of May 27, 1941, and which subsequent to such expiration have been and are now used by the military departments with the concurrence of the Department of the Interior, or to the withdrawal of public domain lands of the Marine Corps Training Center, Twentynine Palms, California, and the naval gunnery ranges in the State of Nevada designated as Basic Black Rock and Basic Sahwave Mountain.

(Pub. L. 85–337, § 1, Feb. 28, 1958, 72 Stat. 27.)

§ 156. Same; approval by Congress of over 5,000 acres for any project or facility.

No public land, water, or land and water area shall, except by Act of Congress, on and after February 28, 1958 be (1) withdrawn from settlement, location, sale, or entry for the use of the Department of Defense for defense purposes; (2) reserved for such use; or (3) restricted from operation of the mineral leasing provisions of the Outer Continental Shelf Lands Act, if such withdrawal, reservation, or restriction would result in the withdrawal, reservation, or restriction of more than five thousand acres in the aggregate for any one defense project or facility of the Department of Defense since the date of enactment of this Act or since the last previous Act of Congress which withdrew, reserved, or restricted public land, water, or land and water area for that project or facility, whichever is later. (Pub. L. 85–337, § 2, Feb. 28, 1958, 72 Stat. 28.)

§ 157. Same; applications; specifications.

Any application filed on and after February 28, 1958 for a withdrawal, reservation, or restriction, the approval of which will, under section 156 of this title, require an Act of Congress, shall specify—

(1) the name of the requesting agency and intended using agency;

(2) location of the area involved, to include a detailed description of the exterior boundaries and excepted areas, if any, within such proposed withdrawal, reservation, or restriction;

(3) gross land and water acreage within the exterior boundaries of the requested withdrawal, reservation, or restriction, and net public land, water, or public land and water acreage covered by the application;

(4) the purpose or purposes for which the area is proposed to be withdrawn, reserved, or restricted, or if the purpose or purposes are classified for national security reasons, a statement to that effect;

(5) whether the proposed use will result in contamination of any or all of the requested withdrawal, reservation, or restriction area, and if so, whether such contamination will be permanent or temporary;

(6) the period during which the proposed withdrawal, reservation, or restriction will continue in effect;

(7) whether, and if so to what extent, the proposed use will affect continuing full operation of the public land laws and Federal regulations relating to conservation, utilization, and development of mineral resources, timber and other material resources, grazing resources, fish and wildlife resources, water resources, and scenic, wilderness, and recreation and other values; and

(8) if effecting the purpose for which the area is proposed to be withdrawn, reserved, or restricted, will involve the use of water in any State, whether, subject to existing rights under law, the intended using agency has acquired, or proposes to acquire, rights to the use thereof in conformity with State laws and procedures relating to the control, appropriation, use, and distribution of water.

(Pub. L. 85–337, § 3, Feb. 28, 1958, 72 Stat. 28.)

§ 158. Same; mineral resources.

All withdrawals or reservations of public lands for the use of any agency of the Department of Defense, except lands withdrawn or reserved specifically as naval petroleum, naval oil shale, or naval coal reserves, heretofore or hereafter made by the United States, shall be deemed to be subject to the condition that all minerals, including oil and gas, in the lands so withdrawn or reserved are under the jurisdiction of the Secretary of the Interior and there shall be no disposition of, or exploration for, any minerals in such lands except under the applicable public land mining and mineral leasing laws: *Provided*, That no disposition of, or exploration for, any minerals in such lands shall be made where the Secretary of Defense, after consultation with the Secretary of the Interior, determines that such disposition or exploration is inconsistent with the military use of the lands so withdrawn or reserved. (Pub. L. 85–337, § 6, Feb. 28, 1958, 72 Stat. 30.)

20. Open Space Land

42 U.S.C. 1500–1500d–1

(See Open Space Land under Title II *Environment, Generally*)

21. Preserve Wildlife Refuges and Maintenance of Natural Beauty on Lands Traversed by Highway Projects

49 U.S.C. 1653(f)

§ 1653. General provisions.

* * * * *

(f) Maintenance and enhancement of natural beauty of land traversed by transportation lines.

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After August 23, 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significane as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

22. Recreational Use of Fish and Widlife Areas Administered by the Secretary of the Interior

16 U.S.C. 460k–460k–4

§ 460k. Public recreation use of fish and wildlife conservation areas; compatibility with conservation purposes; appropriate incidental or secondary use; consistency with other Federal operations and primary objectives of particular areas; curtailment; forms of recreation not directly related to primary purposes of individual areas; repeal or amendment of provisions for particular areas.

In recognition of mounting public demands for recreational opportunities on areas within the National Wildlife Refuge System, national fish hatcheries, and other conservation areas administered by the Secretary of the Interior for fish and wildlife purposes; and in recognition also of the resulting imperative need, if such recreational opportunities are provided, to assure that any present or future recreational use will be compatible with, and will not prevent accomplishment of, the primary purposes for which the said conservation areas were acquired or established, the Secretary of the Interior is authorized, as an appropriate incidental or secondary use, to administer such areas or parts thereof for public recreation when in his judgment public recreation can be an appropriate incidental or secondary use: *Provided*, That such public recreation use shall be permitted only to the extent that is practicable and not inconsistent with other previously authorized Federal operations or with the primary objectives for which each particular area is established: *Provided further*, That in order to insure accomplishment of such primary objectives, the Secretary, after consideration of all authorized uses, purposes, and other pertinent factors relating to individual areas, shall curtail public recreation use generally or certain types of public recreation use within individual areas or in portions thereof whenever he considers such action to be necessary: *And provided further*, That none of the aforesaid refuges, hatcheries, game ranges, and other conservation areas shall be used during any fiscal year for those forms of recreation that are not directly related to the primary purposes and functions of the individual areas until the Secretary shall have determined—

(a) that such recreational use will not interfere with the primary purposes for which the areas were established, and

(b) that funds are available for the development, operation, and maintenance of these permitted forms of recreation. This section shall not be construed to repeal or amend previous enactments relating to particular areas.

(Pub. L. 87–714, § 1, Sept. 28, 1962, 76 Stat. 653; Pub. L. 89–669, § 9, Oct. 15, 1966, 80 Stat. 930.)

AMENDMENTS

1966—Pub. L. 89–669 substituted "areas within the National Wildlife Refuge System" for "national wildlife refuges, game ranges," in the introductory text.

§ 460k–1. Acquisition of lands for recreational development; funds.

The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

(1) incidental fish and wildlife-oriented recreational development,

(2) the protection of natural resources,

(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 1533 of this title, or

(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this

section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps. Lands acquired pursuant to this section shall become a part of the particular conservation area to which they are adjacent. (As amended Pub. L. 92–534, Oct. 23, 1972, 86 Stat. 1063; Pub. L. 93–205, § 13(d), Dec. 28, 1973, 87 Stat. 902.)

AMENDMENTS

1973—Pub. L. 93–205 inserted references to the acquisition of interest in land the conservation of endangered species or threatened species listed by the Secretary pursuant to section 1533 of this title.

1972—Pub. L. 92–534 substituted provisions authorizing the Secretary to acquire lands suitable for fish and wildlife oriented recreational development, or for the protection of natural resources and adjacent to conservation areas, for provisions authorizing the Secretary to acquire limited areas of land for recreational development adjacent to conservation areas in existence or approved by the Migratory Bird Conservation Commission as of September 28, 1962.

§ 460k–2. Cooperation with agencies, organizations and individuals; acceptance of donations; restrictive covenants.

In furtherance of the purposes of sections 460k to 460k–4 of this title, the Secretary is authorized to cooperate with public and private agencies, organizations, and individuals, and he may accept and use, without further authorization, donations of funds and real and personal property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors when such covenants are deemed by the Secretary to be compatible with the purposes of the wildlife refuges, games ranges, fish hatcheries, and other fish and wildlife conservation areas. (Pub. L. 87–714, § 3, Sept. 28, 1962, 76 Stat. 653.)

§ 460k–3. Charges and fees; permits; regulations; penalties.

The Secretary may establish reasonable charges and fees and issue permits for public use of national wildlife refuges, game ranges, national fish hatcheries, and other conservation areas administered by the Department of the Interior for fish and wildlife purposes. The Secretary may issue regulations to carry out the purposes of sections 460k to 460k–4 of this title. A violation of such regulations shall be a petty offense (section 1 of Title 18) with maximum penalties of imprisonment for not more than six months, or a fine of not more than $500, or both. (Pub. L. 87–714, § 4, Sept. 28, 1962, 76 Stat. 654.)

§ 460k–4. Appropriations.

There is authorized to be appropriated such funds as may be necessary to carry out the purposes of sections 460k to 460k–4 of this title, including the construction and maintenance of public recreational facilities. (Pub. L. 87–714, § 5, Sept. 28, 1962, 76 Stat. 654.)

23. Related Highway Legislation

23 U.S.C. 138, 204–207, 317

§ 138. Preservation of parklands.

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. (Added Pub. L. 89–574, § 15(a), Sept. 13, 1966, 80 Stat. 771, and amended Pub. L. 90–495, § 18(a), Aug. 23, 1968, 82 Stat. 823.)

AMENDMENTS

1968—Pub. L. 90–495 amended section generally so as to make it clear that the section does not constitute a mandatory prohibition against the use of enumerated lands but rather is a discretionary authority.

§ 204. Forest highways.

(a) Funds available for forest highways shall be used by the Secretary to pay for the cost of construction and maintenance thereof. In connection therewith, the Secretary may enter into construction contracts and such other contracts with a State, or civil subdivision thereof as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions, may be accepted but shall not be required by the Secretary.

(c) Construction estimated to cost $5,000 or more per mile, exclusive of bridges, shall be advertised and let to contract. If such estimated cost is less than $5,000 per mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary

on his own account. For such purpose, the Secretary may purchase, lease, hire, rent, or otherwise obtain all necessary supplies, materials, tools, equipment, and facilities required to perform the work, and may pay wages, salaries, and other expenses for help employed in connection with such work.

(d) All appropriations for forest highways shall be administered in conformity with regulations jointly approved by the Secretary and the Secretary of Agriculture.

(e) The Secretary shall transfer to the Secretary of Agriculture from appropriations for forest highways such amounts as may be needed to cover necessary administrative expenses of the Forest Service in connection with the forest-highway program.

(f) Funds available for forest highways shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 907.)

§ 205. Forest development roads and trails.

(a) Funds available for forest development roads and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost $15,000 or more per mile or $15,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than $15,000 per mile or $15,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for forest development roads and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 907; Pub. L. 86–657, § 8(c), July 14, 1960, 74 Stat. 524; Pub. L. 88–423, § 4(d), Aug. 13, 1964, 78 Stat. 398; Pub. L. 90–495, § 9, Aug. 23, 1968, 82 Stat. 820.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–495 increased from $10,000 to $15,000 the cost limitation on construction per mile, or per project for projects of less than a mile, which the Forest Service may construct on its own account and struck out provisions spelling out the functions which the Secretary of Agriculture is authorized to perform in carrying out such construction.

1964—Subsec. (a). Pub. L. 88–423 inserted "and other" following "experimental."

1960—Subsec. (a). Pub. L. 86–657 substituted "may enter into contracts" for "may enter into construction contracts."

§ 206. Park roads and trails.

(a) Funds available for park roads and trails shall be used to pay for the cost of construction and improvement thereof.

(b) Appropriations for the construction and improvement of park roads shall be administered in conformity with regulations jointly approved by the Secretary and the Secretary of Interior. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 908.)

§ 207. Parkways.

(a) Funds available for parkways shall be used to pay for the cost of construction and improvement thereof.

(b) Appropriations for the construction of parkways shall be administered in conformity with regulations jointly approved by the Secretary and the Secretary of the Interior.

(c) The location of parkways upon public lands, national forests, or other Federal reservations, shall be determined by agreement between the department having jurisdiction over such lands and the Secretary of the Interior. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 908.)

§ 317. Appropriation for highway purposes of lands or interests in lands owned by the United States.

(a) If the Secretary determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(b) If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified.

(c) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated.

(d) The provisions of this section shall apply only to projects constructed on a Federal-aid system or under the provisions of chapter 2 of this title. (Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 916.)

24. Rules and Regulations Relating to the Administration of Fish and Wildlife Conservation at Small Watershed Projects

Exec. Order 10584 as amended by Ex. Order 10913

(See Ex. Order 10913 under Title IV *Executive Orders*)

25. Small Reclamation Projects

43 U.S.C. 422a, 422h

§ 422a. Declaration of purpose.

The purpose of sections 422a to 422 of this title is to encourage State and local participation in the development of projects under the Federal reclamation laws and to provide for Federal assistance in the development of similar projects in the seventeen western reclamation States by non-Federal organizations. (Aug. 6, 1956, ch. 972, § 1, 70 Stat. 1044.)

§ 422h. Planning and construction.

The planning and construction of projects undertaken pursuant to sections 422a to 422k of this title shall be subject to all procedural requirements and other provisions of the Fish and Wildlife Coordination Act, as amended. (Aug. 6, 1956, ch. 972, § 8, 70 Stat. 1047; Sept. 2, 1966, Pub. L. 89–553, § 1(5), 80 Stat. 377.)

AMENDMENTS

1966—Pub. L. 89–553 substituted "the Fish and Wildlife Coordination Act, as amended" for "the Act of Aug. 14, 1946 (60 Stat. 1080)", which, for purposes of classification, had been changed to "sections 661—665, and 666—666c of Title 16".

26. Supplemental National Forest Reforestation Fund

16 U.S.C. 576c–576e

§ 576. Reforestation; establishment of forest tree nurseries; tree planting; seed sowing and forest improvement work.

* * * * *

§ 576c. Same; Supplemental National Forest Reforestation Fund; establishment; duration; authorization of appropriations.

Notwithstanding any other provision of law, the Secretary of Agriculture shall establish a "Supplemental National Forest Reforestation Fund", and transfer to that fund beginning with the fiscal year, commencing July 1, 1972, and ending on Sept. 30, 1987, such amounts as may be appropriated therefor. There is hereby authorized to be appropriated for such purpose for each of the fiscal years during such period the sum of $65,000,000. (Pub. L. 92–421, § 1, Sept. 18, 1972, 86 Stat. 678.)

§ 576d. Same; expenditure of Fund moneys; availability of moneys from other sources unaffected.

Moneys transferred to the National Forest Reforestation Fund under the provisions of sections 576c to 576e of this title shall be available to the Secretary of Agriculture, for expenditure upon appropriation, for the purpose of supplementing programs of tree planting and seeding of national forest lands determined by the Secretary to be in need of reforestation. Such moneys shall be available until expended, and shall be provided without prejudice to appropriations or funds available from other sources for the same purposes, including those available pursuant to section 576b of this title. (Pub. L. 92–421, § 2, Sept. 18, 1972, 86 Stat. 678.)

§ 576e. Same; annual reports to Congress.

The Secretary of Agriculture shall, within one year after September 18, 1972, provide a report to the Congress which sets forth the scope of the total national forest reforestation needs, and a planned program for reforesting such lands, including a description of the extent to which funds authorized by sections 576c to 576e of this title are to be applied to the program. The Secretary shall annually thereafter make a report to the Congress on the use of funds authorized by sections 576c to 576e of this title and the progress toward completion of this planned national forest reforestation program. (Pub. L. 92–421, § 3, Sept. 18, 1972, 86 Stat. 678.)

27. Starling and Blackbird Control in Kentucky and Tennessee

P.L. 94–207 (90 Stat. 28)

AN ACT

To provide for starling and blackbird control in Kentucky and Tennessee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds that in Ken-

tucky and Tennessee large concentrations of starlings, grackles, blackbirds, and other birds found in "blackbird roosts" pose a hazard to human health and safety, livestock and agriculture, that the roosts are reestablished each winter, that dispersal techniques have been unsuccessful, that control is most effective when birds are concentrated in winter roosts, and that an emergency does exist which requires immediate action with insufficient time to comply with the National Environmental Policy Act.

SEC. 2. (a) Upon certification by the Governor of Kentucky and/or Tennessee to the Secretary of the Interior that "blackbird roosts" are a significant hazard to human health, safety or property in his state, the Secretary of the Interior shall provide for roosts determined through normal survey practices of the Department of the Interior to contain in excess of 500,000 birds to be treated with chemicals registered for bird control purposes, unless the Secretary determines that treatment of a particular roost would pose a hazard to human health, safety or property.

(b) The provisions of the National Environmental Policy Act of 1969 (83 Stat. 852), the Federal Environmental Pesticide Control Act (86 Stat. 975), or any other provision of law shall not apply to any such blackbird control activities undertaken, on or before April 15, 1976, by the States of Kentucky or Tennessee or the Federal Government within the States of Kentucky or Tennessee.

28. Taylor Grazing Act

43 U.S.C. 315, 315a, 315h, 315n

§ 315. Grazing districts; establishment; restrictions; prior rights; rights-of-way; hearing and notice; hunting or fishing rights.

In order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: *Provided*, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this subchapter shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this subchapter nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this subchapter, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this subchapter, the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stock-grazing rights. Neither this subchapter nor sections 291 to 301 of this title, commonly known as the "Stock Raising Homestead Act", shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 471 of Title 16, for the purposes set forth in section 475 of Title 16, or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: *Provided, however*, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry of settlement. Nothing in this subchapter shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district. (June 28, 1934, ch. 865, § 1, 48 Stat. 1269; June 26, 1936, ch. 842, title I, § 1, 49 Stat. 1976; May 28, 1954, ch. 243, § 2, 68 Stat. 151.)

AMENDMENTS

1954—Act May 28, 1954, struck out of first sentence the provision limiting to one hundred and forty-two million acres the area which might be included in grazing districts.

Act June 26, 1936 increased the acreage which could be included in grazing districts from 80 million to 142 million acres.

§ 315a. Protection, administration, regulation, and improvement of districts; rules and regulations; study of erosion and flood control; offenses.

The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of section 315 of this title, and he shall make such rules and regulations and establish such service, enter into such coopera-

tive agreements, and do any and all things necessary to accomplish the purposes of this subchapter and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range; and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this subchapter, through such funds as may be made available for that purpose, and any willful violation of the provisions of this subchapter or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500. (June 28, 1934, ch. 865, § 2, 48 Stat. 1270.)

§ 315h. Cooperation with associations, land officials, and agencies engaged in conservation or propagation of wildlife; local hearings on appeals; acceptance and use of contributions.

The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. The Secretary of the Interior shall provide by appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedure in the land department. The Secretary of the Interior shall also be empowered to accept contributions toward the administration, protection, and improvement of lands within or without the exterior boundaries of a grazing district, moneys, so received to be covered into the Treasury as a special fund, which is appropriated and made available until expended, as the Secretary of the Interior may direct, for payment of expenses incident to said administration, protection, and improvement, and for refunds to depositors of amounts contributed by them in excess of their share of the cost. (June 28, 1934, ch. 865, § 9, 48 Stat. 1273; June 19, 1948, ch. 548, § 2, 62 Stat. 533.)

AMENDMENTS

1948—Act June 19, 1948 substituted "lands within or without the external boundaries of a grazing district" for the "district" in the third sentence, in order to permit acceptance of lands without boundaries of grazing district.

§ 315n. State police power not abridged.

Nothing in this subchapter shall be construed as restricting the respective States from enforcing any and all statutes enacted for police regulation, nor shall the police power of the respective States be, by this subchapter, impaired or restricted, and all laws heretofore enacted by the respective States or any thereof, or that may hereafter be enacted as regards public health or public welfare, shall at all times be in full force and effect: *Provided, however,* That nothing in this section shall be construed as limiting or restricting the power and authority of the United States. (June 28, 1934, ch. 865, § 16, 48 Stat. 1275.)

29. Upper Mississippi River Wild Life and Fish Refuge

16 U.S.C. 721–731

Sec.

§ 721. Upper Mississippi River Wild Life and Fish Refuge; short title; person defined.

This chapter may be cited as "The Upper Mississippi River Wild Life and Fish Refuge Act." The term "person" as used therein includes an individual, partnership, association, or corporation. (June 7, 1924, ch. 346, §§ 1, 12, 43 Stat. 650, 652.)

§ 722. Same; acquisition of lands and water for.

The Secretary of the Interior is authorized to acquire, by purchase, gift, or lease, such areas of land, or of land and water, situated between Rock Island, Illinois, and Wabasha, Minnesota, on either side of or upon islands in the Mississippi River which are not used for agricultural purposes, as he determines suitable for the purposes of this chapter, and any such area when acquired shall become a part of the Upper Mississippi River Wild Life and Fish Refuge (referred to in this chapter as the "refuge"). (June 7, 1924, ch. 346, §§ 2, 3, 43 Stat. 650; June 18, 1934, ch. 602, 48 Stat. 1015; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 723. Same; purposes of refuge; regulations by Secretary of the Interior.

The refuge shall be established and maintained (a) as a refuge and breeding place for migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and (b) to such extent as the Secretary of the Interior may by regulations prescribe, as a refuge and breeding place for other wild birds, game animals, fur-bearing animals, and for the conservation of wild flowers and aquatic plants, and (c) to such extent as the Secretary of the Interior may by regulations prescribe as a refuge and breeding place for fish and other aquatic animal life. (June 7, 1924, ch. 346,

§ 3, 43 Stat. 650; 1939 Reorg. Plan No. II, § 4 (e, f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 724. Same; consent of States to acquisition; existing rights-of-way, easements, and so forth.

(a) Such area shall not be acquired by the Secretary of the Interior until the legislature of each State in which is situated any part of the areas to be acquired under section 722 of this title has consented to the acquisition of such part by the United States for the purposes therein stated, and, except in the case of a lease, no payment shall be made by the United States for any such area until title thereto is satisfactory to the Attorney General and is vested in the United States.

(b) The existence of a right of way, easement, or other reservation or exception in respect of such area shall not be a bar to its acquisition (1) if the Secretary of the Interior determines that any such reservation or exception will in no manner interfere with the use of the area for the purposes for which acquired, or (2) if in the deed or other conveyance it is stipulated that any reservation or exception in respect of such area, in favor of the person from whom the United States receives title, shall be subject to regulations prescribed under authority of this chapter. (June 7, 1924, ch. 346, § 4, 43 Stat. 650; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 725. Same; regulations, and so forth, by Secretary of the Interior.

Except where it is specifically provided otherwise, the Secretary of the Interior shall prescribe such regulations, exercise such functions, and perform such duties as may be necessary to carry out the purposes of this chapter. (June 7, 1924, ch. 346, § 5, 43 Stat. 651; 1939 Reorg. Plan No. II, § 4 (e, f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 726. Same; acts prohibited in refuge; commercial fishing.

No person shall, except in accordance with regulations prescribed by the Secretary of the Interior in respect of wild birds, game animals, fur-bearing animals, wild flowers, and aquatic plants, or in respect of fish and other aquatic-animal life—

(a) Enter the refuge for any purpose; or

(b) Disturb, injure, kill, or remove, or attempt to disturb, injure, kill, or remove any wild bird, game animal, fur-bearing animal, fish, or other aquatic-animal life, on the refuge; or

(c) Remove from the refuge, or injure or destroy thereon any flower, plant, tree, or other natural growth, or the nest or egg of any wild bird; or

(d) Injure or destroy any notice, sign board, fence, building, or other property of the United States thereon.

Commercial fishing may, however, be conducted in the waters of this refuge under regulation by the Secretary of the Interior. (June 7, 1924, ch. 346, §§ 6, 7, 43 Stat. 651; 1939 Reorg. Plan No. II, § 4 (e, f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 727. Same; powers of employees of Department of the Interior; searches and seizures.

(a) Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this chapter (1) shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this chapter or of any regulation made pursuant to this chapter, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction, (2) shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this chapter or regulations made pursuant thereto, and (3) shall have authority, with a search warrant issued by an officer or court of competent jurisdiction to make a search in accordance with the terms of such warrant. Any judge of a court established under the laws of the United States, or any United States commissioner may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(b) All birds, animals, fish, or parts thereof captured, injured, or killed, and all flowers, plants, trees, and other natural growths, and nests and eggs of birds removed, and all implements or paraphernalia, including guns, fishing equipment, and boats used or attempted to be used contrary to the provisions of this chapter or any regulations made pursuant thereto, shall, when found by such employee or by any marshal or deputy marshal, be summarily seized by him and placed in the custody of such persons as the Secretary of the Interior may by regulation prescribe.

(c) A report of the seizure shall be made to the United States attorney for the judicial district in which the seizure is made, for forfeiture either (1) upon conviction of the offender under section 730 of this title, or (2) by proceedings by libel in rem. Such libel proceedings shall conform as near as may be to civil suits in admiralty, except that either party may demand trial by jury upon any issue of fact when the value in controversy exceeds $20. In case of a jury trial the verdict of the jury shall have the same effect as the finding of the court upon the facts. Libel proceedings shall be at the suit and in the name of the United States. If such forfeiture proceedings are not instituted within a reasonable time, the United States attorney shall give notice thereof, and the custodian shall thereupon release the articles seized. (June 7, 1924, ch. 346, § 8, 43 Stat. 651; 1939 Reorg. Plan No. II, § 4 (e, f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 728. Same; expenditures.

The Secretary of the Interior is authorized to make such expenditures for construction, equipment, maintenance, repairs, and improvements, including expenditures for personal services at the seat of government and elsewhere, as may be necessary to execute the functions imposed upon him by this chapter and as may be provided for by Congress

from time to time. (June 7, 1924, ch. 346, § 9, 43 Stat. 652; 1939 Reorg. Plan No. II, § 4 (e, f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.)

§ 729. Same; price per acre.

The Secretary of the Interior shall not pay for any land or land and water a price which shall exceed an average cost of $10 per acre: *Provided further,* That this provision shall not apply to any land or land and water prior to May 12, 1928, acquired or contracted for under the provisions of section 722 of this title. (June 7, 1924, ch. 346, § 10, 43 Stat. 652; Mar. 4, 1925, ch. 558, 43 Stat. 1354; May 12, 1928, ch. 534, 45 Stat. 502; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 730. Same; violations of law or regulations; punishment.

Any person who shall violate or fail to comply with any provision of or any regulation made pursuant to this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or be imprisoned not more than six months, or both. (June 7, 1924, ch. 346, § 11, 43 Stat. 652.)

§ 731. Same; effect on other laws.

Nothing in this chapter shall be construed as exempting any portion of the Mississippi River from the provisions of Federal laws for the improvement, preservation, and protection of navigable waters, nor as authorizing any interference with the operations of the Department of the Army in carrying out any project now or hereafter adopted for the improvement of said river. (June 7, 1924, ch. 346, § 13, 43 Stat. 652.)

30. Youth Conservation Corps Act

16 U.S.C. 1701–1706

(See Youth Conservation Corps under Title II *Environment, Generally*)

TITLE V—FISH RESOURCES, PRESERVATION

1. Admission of Investigators to Marine Biological Station, Sarasota, Florida

20 U.S.C. 92

§ 92. Admissions to marine biological station for pursuit of investigations.

The professors, instructors, and students of the several land-grant, agricultural, and mechanical colleges of the United States shall be admitted to the marine biological station on the Gulf of Mexico on the coast of Florida, to pursue such investigation in fish culture and biology as may be practicable, without cost to the Government, under such rules and regulations as may be from time to time prescribed by the Secretary of Interior. (Mar. 1, 1911, ch. 189, § 2, 36 Stat. 964; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Aug. 1, 1914, ch. 223, § 1, 38 Stat. 665; 1939 Reorg. Plan No. II, § 4(e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2107, 54 Stat. 1231.)

2. Atlantic Tunas Convention

16 U.S.C. 971–971h

Sec.

§ 971. Definitions.

For the purpose of this chapter—

(1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(4) The term "fisheries zone" means the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.

(5) The term "fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.

(6) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

(7) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

(8) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(9) The term "Secretary" means the Secretary of Commerce.

(10) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 94–70, § 2, Aug. 5, 1975, 89 Stat. 385; amended Pub. L. 94–265, § 405(a), Apr. 13, 1976, 90 Stat. 361.)

SEPARABILITY OF PROVISIONS

Section 11 of Pub. L. 94–70 provided that: "If any provision of this Act [this chapter] or the application of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act [this chapter] and the applicability of such provision to

other circumstances or persons shall not be affected thereby."

§ 971a. Commissioners.

(a) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section 971b of this title, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners. (Pub. L. 94–70, § 3, Aug. 5, 1975, 89 Stat. 385.)

§ 971b. Advisory committee.

The United States Commissioners shall appoint an advisory committee which shall be composed of not less than five nor more than twenty individuals who shall be selected from the various groups concerned with the fisheries covered by the Convention. Each member of the advisory committee shall serve for a term of two years and be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Commissioners—

(1) if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

(2) in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom paragraph (1) does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.

(Pub. L. 94–70, § 4, Aug. 5, 1975, 89 Stat. 386.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 971a of this title.

§ 971c. Authority of Secretary of State; cooperative enforcement agreements.

(a) The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

(b) The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties

under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or fisheries zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or tribunal of a foreign country. (Pub. L. 94–70, § 5, Aug. 5, 1975, 89 Stat. 386.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971d, 971f of this title.

§ 971d. Administration.

(a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement.

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the fisheries zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Primary enforcement responsibility.

Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c) Regulations to carry out Commission recommendations.

(1) Upon favorable action by the Secretary of State under section 971c(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) select for regulation one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;

(C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the

Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section; and

(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(d) Commission recommendations concerning bluefin tuna; regulations.

(1) Not withstanding [1] section 971c(a) of this title and subsection (c) of this section, the recommendations of the Commission concerning bluefin tuna (Thunnus thynnus thynnus) which were proposed at the third regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this subsection.

[1] So in original.

(2) Not later than the thirtieth day after August 5, 1975, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of section 553 of Title 5, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this chapter, for so long as such recommendations are so in effect. (Pub. L. 94–70, § 6, Aug. 5, 1975, 89 Stat. 387.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 971e of this title.

§ 971e. Violations; fines and forfeitures; related laws.

(a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 971d of this title; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 971d of this title, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 971d (c) or (d) of this title, from any

country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 971d (c) or (d) of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 971d (c) or (d) of this title.

(e)(1) Any person who—

(A) violates any provision of subsection (a) of this section shall be assessed a civil penalty of not more than $25,000, and for any subsequent violation of such subsection (a) shall be assessed a civil penalty of not more than $50,000;

(B) violates any provision of subsection (b) or (c) of this section shall be assessed a civil penalty of not more than $1,000, and for any subsequent violation of such subsection (b) or (c) shall be assessed a civil penalty of not more than $5,000; or

(C) violates any provision of subsection (d) of this section shall be assessed a civil penalty of not more than $100,000.

(2) The Secretary is responsible for the assessment of the civil penalties provided for in paragraph (1). The Secretary may remit or mitigate any civil penalty assessed by him under this subsection for good cause shown.

(3) No penalty shall be assessed under this subsection unless the person accused of committing any violation is given notice and opportunity for a hearing with respect to such violation.

(4) Upon any failure of any person to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(f) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(g) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter. (Pub. L. 94–70, § 7, Aug. 5, 1975, 89 Stat. 390.)

§ 971f. Enforcement.

(a) Any person authorized in accordance with the provisions of this chapter to enforce the provisions of this chapter and the regulations issued thereunder may—

(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this chapter or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

(2) arrest, with or without a warrant, any person who violates the provisions of this chapter or any regulation issued thereunder in his presence or view;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this chapter or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

(b) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 971c(b) of this title for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

(c) Notwithstanding the provisions of section 2464 of Title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of

the court pending judgment in the case. (Pub. L. 94–70, § 8, Aug. 5, 1975, 89 Stat. 391.)

§ 971g. Cooperation in carrying out Convention; assistance to Commission; non-restraint of Commission functions; State jurisdiction; continuing review of State laws and regulations.

(a) The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

(b) All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

(c) None of the prohibitions deriving from this chapter, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

(d)(1) Except as provided in paragraph (2) of this subsection, nothing in this chapter shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this chapter to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State—

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this chapter, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this chapter, or (ii) are not effectively enforced.

If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this chapter within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such regulations.

(e) To insure that the purposes of subsection (d) of this section are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) of this section applies or may apply and the extent to which such laws and regulations are enforced. (Pub. L. 94–70, § 9, Aug. 5, 1975, 89 Stat. 392.)

§ 971h. Authorization of appropriations.

There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal year 1976, the period beginning July 1, 1976, and ending September 30, 1976, and fiscal year 1977 such sums as may be necessary for carrying out the purposes and provisions of this chapter, including—

(1) necessary travel expenses of the United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of Title 5; and

(2) the United States share of the joint expenses of the Commission as provided in article X of the convention.

(Pub. L. 94–70, § 10, Aug. 5, 1975, 89 Stat. 393.)

3. Central, Western, and South Pacific Oceans Fisheries Resources Development Act

16 U.S.C. 758a note

(See Preservation of Fishery Resources under this title)

4. Coastal Zone Management

16 U.S.C. 1451–1464

(See Coastal Zone Management under title VIII *Oceanography*)

5. Control of Jellyfish

16 U.S.C. 1201–1205

(See Control of Jellyfish under title XI *Water Pollution*)

6. Control of Obnoxious Plants in Navigable Waters

33 U.S.C. 610

(See Control of Obnoxious Plants in Navigable Waters under title XI *Water Pollution*)

7. Control of Starfish

16 U.S.C. 1211–1213

(See Control of Starfish under title XI *Water Pollution*)

8. Delegation of Functions to Director of Bureau of Budget

Ex. Order 10654, 21 F.R. 511

(See Executive Order 10654 under title III *Executive Orders*)

9. Delegating to the Secretary of State Authority to Approve or Reject Recommendations and Actions of Certain Fisheries Commissions

Ex. Ord. 11467

(See Ex. Ord. 11467 under title III *Executive Orders*)

10. Federal License of Water Resource Project; Fishways

16 U.S.C. 791a, 803, 811

(See Federal License of Water Resource Projects; Fishways under title XII *Water Resources*)

11. Fish Protein Concentrate Study

22 U.S.C. 2178

§ 2178. Fish and other protein concentrates.

(a) Studies, marketing techniques, consumer acceptance, and nutrition; consultations with technical groups or agencies; participation by United States private enterprise.

The President is authorized to conduct a program designed to demonstrate the potential and to encourage the use of fish and other protein concentrates as a practical means of reducing nutritional deficiencies in less developed countries and areas. This program shall include—

(1) studies and activities relating to food technology;

(2) development of suitable marketing techniques;

(3) development of consumer acceptance programs; and

(4) feeding programs designed to demonstrate the nutritional value of fish and other protein concentrates as a diet supplement.

In carrying out his functions under this section, the President shall consult with the National Council on Marine Resources and Engineering Development, appropriate Government agencies and other such technical groups or agencies as may be helpful with such activities. In accordance with section 2351(b) of this title, the President shall encourage full participation in such program by United States private enterprise.

(b) Use of available funds.

The President is authorized to use funds made available under this subchapter for the purposes of this section, and is urged to use at least $2,500,000 of such funds for such purposes. (Pub. L. 87–195, pt. I, § 218, as added Pub. L. 90–137, pt. I, § 103(d), Nov. 14, 1967, 81 Stat. 450.)

CROSS REFERENCES

Fish research and experimentation program, see section 778d et seq. of Title 16, Conservation.

12. Fish Research and Experimentation Program

16 U.S.C. 778–778h

Sec.

§ 778. Establishment of experiment stations; purpose of research.

The Secretary of the Interior is authorized and directed to establish an experiment station or stations for the purpose of carrying on a program of research and experimentation—

(1) to determine species of fishes most suitable for culture on a commercial basis in shallow reservoirs and flooded rice lands;

(2) to determine methods for production of fingerling fishes for stocking in commercial reservoirs;

(3) to develop methods for the control of parasites and diseases of brood fishes and of fingerlings prior to stocking;

(4) to develop economical methods for raising the more desirable species of fishes to a marketable size;

(5) to determine, in cooperation with the Department of Agriculture, the effects of fish-rice rotations, including crops other than rice commonly grown on rice farms, upon both the fish and other crops; and

(6) to develop suitable methods for harvesting the fish crop and preparing it for marketing, including a study of sport fishing as a means of such harvest.

(Pub. L. 85–342, § 1, Mar. 15, 1958, 72 Stat. 35.)

§ 778a. Acquisition of lands; construction of buildings; employment of personnel; cooperation with other agencies; publication of results.

For the purpose of carrying out the provisions of this chapter, the Secretary of the Interior is authorized (1) to acquire by purchase, condemnation, or otherwise such suitable lands, to construct such buildings, to acquire such equipment and apparatus, and to employ such officers and employees as he deems necessary; (2) to cooperate with State and other institutions and agencies upon such terms and conditions as he determines to be appropriate; and (3) to make public the results of such research and experiments conducted pursuant to section 778 of this title. (Pub. L. 85–342, § 2, Mar. 15, 1958, 72 Stat. 35.)

§ 778b. Cooperation with Department of Agriculture.

The Department of Agriculture is authorized to cooperate in carrying out the provisions of this chapter by furnishing such information and assistance as may be requested by the Secretary of the Interior. (Pub. L. 85–342, § 3, Mar. 15, 1958, 72 Stat. 35.)

§ 778c. Authorization of appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. (Pub. L. 85–342, § 4, Mar. .5, 1958, 72 Stat. 35.)

§ 778d. Fish protein concentrate; studies, research, and experiments.

The Secretary of the Interior is authorized to conduct, and through grants to and contracts with public and private agencies to promote studies, research, and experiments designed to develop the best and most economical processes and methods to reduce fish which are in abundant supply and which are not now widely sought after for human food to a nutritious, wholesome, and stable fish protein concentrate, as well as to conduct food technology and feasibility studies with respect to such products. (Pub. L. 89–701, § 1, Nov. 2, 1966, 80 Stat. 1089.)

§ 778e. Same.

(a) Demonstration plants.

The Secretary is also authorized to construct not to exceed one experiment and demonstration plant for the production of a fish protein concentrate and to acquire by lease one additional plant for such purpose. Such plants shall be designed to demonstrate the reliability and practicability and the economic, engineering, and operating potentials of the processes and methods to reduce fish to fish protein concentrate. Such plants shall be located in such geographical areas as the Secretary determines will demonstrate optimum feasibility from the standpoint of operation, maintenance, and economic potential. The Secretary of the Interior shall not commence construction of or lease any plant pursuant to the provisions of sections 778d to 778h of this title until the Secretary of Health, Education, and Welfare shall have certified that fish protein concentrate produced from whole fish complies with the provisions of the Federal Food, Drug, and Cosmetics Act.

(b) Operation and maintenance; terms and conditions of contracts: compilation of records, including cost data; availability of records to public and Congress; public access to plants.

The Secretary may operate and maintain or contract for the operation and maintenance of such

plants. Each operation and maintenance contract shall provide, in addition to such terms and conditions as the Secretary deems desirable, for the compilation by the contractor of complete records, including cost data, with respect to the operation, maintenance, and engineering of the plants. The records so compiled shall be made available to the public and to the Congress by the Secretary at periodic and reasonable intervals. Access by the public to the plants shall be assured during all phases of their operation subject to such reasonable restrictions as to time and place as the Secretary may require or approve.

(c) Access to records by Comptroller General; limitation.

All contracts entered into pursuant to subsection (b) of this section shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall until the expiration of three years after final payment have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

(d) Disposition of plant and equipment.

Each plant constructed or leased under sections 778d to 778e of this title, and its equipment, upon the expiration of a period deemed adequate by the Secretary for experiment and demonstration purposes, shall, as promptly as practicable, be disposed of in accordance with the applicable provisions of the Federal Property and Administrative Services Act of 1949, as amended.

(e) Acquisition of property.

The Secretary may acquire lands or interests therein, patents, licenses, technical data, inventions, secret processes, supplies, and equipment by purchase, license, lease, or donation to carry out the provisions of this section. (Pub. L. 89–701, § 2, Nov. 2, 1966, 80 Stat. 1089.)

§ 778f. Same; authorization of appropriations; availability of funds until expended; authority of Secretary under other provisions of law unaffected.

There is authorized to be appropriated not to exceed $1,000,000 for the construction or leasing of one experiment and demonstration plant. There is also authorized to be appropriated not to exceed $1,555,000 annually for a period of five fiscal years, beginning with the fiscal year 1968, for the leasing or construction of the experiment and demonstration plant referred to in the preceding sentence, for the operation and maintenance of such experiment and demonstration plant and for conducting the program authorized by sections 778d to 778h of this title. Sums appropriated under this section are authorized to remain available until expended. Nothing in sections 778d to 778h of the title shall be construed to amend, repeal, or otherwise modify the authority of the Secretary of the Interior to carry out fish protein concentrate research under any other provision of law. (Pub. L. 89–701, § 3, Nov. 2, 1966, 80 Stat. 1090; Pub. L. 90–549, Oct. 4, 1968, 82 Stat. 936.)

AMENDMENTS

1968—Pub. L. 90–549 added provisions authorizing appropriations for the leasing of one experiment and demonstration plant, and substituted provisions authorizing appropriations for a period of five fiscal years, beginning with the fiscal year 1968, for the leasing or construction of one experiment and demonstration plant, and for the operation and maintenance of such experiment and demonstration plant, for provisions authorizing such appropriations for the leasing of one additional experiment and demonstration plant, and for the operation and maintenance of experiment and demonstration plants leased or constructed under sections 778d—778h of this title.

§ 778g. Same; cooperation of Secretary with others in execution of program.

The Secretary shall cooperate with public and private agencies, organizations, institutions, and individuals in carrying out the program authorized by sections 778d to 778h of this title. (Pub. L. 89–701, § 4, Nov. 2, 1966, 80 Stat. 1090.)

§ 778h. Same; termination date.

The authority of the Secretary under sections 778d to 778h of this title shall expire at the expiration of five years from November 2, 1966. (Pub. L. 89–701, § 5, Nov. 2, 1966, 80 Stat. 1090.)

13. Fish Restoration and Management Projects

16 U.S.C. 777–777k

Sec.

§ 777. Cooperation between Federal government and State fish and game departments; conditions on expenditure of funds.

The Secretary of the Interior is authorized and directed to cooperate with the States through their

respective State fish and game departments in fish restoration and management projects as hereinafter set forth: No money apportioned under this chapter to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this chapter and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this chapter, the assent of the governor of the State shall be sufficient. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of this chapter shall agree upon the fish restoration and management projects to be aided in such State under the terms of this chapter, and all projects shall conform to the standards fixed by the Secretary of the Interior. (Aug. 9, 1950, ch. 658, § 1, 64 Stat. 430.)

§ 777a. Definitions.

For the purpose of this chapter the term "fish restoration and management projects" shall be construed to mean projects designed for the restoration and management of all species of fish which have material value in connection with sport or recreation in the marine and/or fresh waters of the United States and include—

(a) such research into problems of fish management and culture as may be necessary to efficient administration affecting fish resources;

(b) the acquisition of such facts as are necessary to guide and direct the regulation of fishing by law, including the extent of the fish population, the drain on the fish supply from fishing and/or natural causes, the necessity of legal regulation of fishing, and the effects of any measures of regulation that are applied;

(c) the formulation and adoption of plans of restocking waters with food and game fishes according to natural areas or districts to which such plans are applicable, together with the acquisition of such facts as are necessary to the formulation, execution, and testing the efficacy of such plans;

(d) the selection, restoration, rehabilitation, and improvement of areas of water or land adaptable as hatching, feeding, resting, or breeding places for fish, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes, and such preliminary or incidental costs and expenses as may be incurred in and about such works; the term "State fish and game department" shall be construed to mean and include any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department. (Aug. 9, 1950, ch. 658, § 2, 64 Stat. 431; July 2, 1956, ch. 489, § 3, 70 Stat. 473; July 12, 1960, Pub. L. 86–624, § 12, 74 Stat. 413.)

AMENDMENTS

1960—Subsec. (d). Pub. L. 86–624 eliminated provisions which defined the term "State" as including the several States and the Territory of Hawaii.

1956—Act July 2, 1956, included the definition of "State."

§ 777b. Appropriations.

To carry out the provisions of this chapter, there is hereby authorized to be appropriated an amount equal to the revenue accruing from tax imposed by section 3406 of Title 26, on fishing rods, creels, reels, and artificial lures, baits, and flies during the fiscal year ending June 30, 1951, and each fiscal year thereafter. The appropriation made under the provisions of this section for each fiscal year shall continue available during the succeeding fiscal year. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this chapter which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation. (Aug. 9, 1950, ch. 658, § 3, 64 Stat. 431.)

§ 777c. Funds available for expenses of investigations and administration; apportionment of funds among States.

So much, not to exceed 8 per centum, of each annual appropriation made in pursuance of the provisions of section 777b of this title as the Secretary of the Interior may estimate to be necessary for his expenses in the conduct of necessary investigations, administration, and the execution of this chapter and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year. The Secretary of the Interior, after making the aforesaid deduction, shall apportion the remainder of the appropriation for each fiscal year among the several States in the following manner: 40 per centum in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 per centum in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such ap-

portionments shall be adjusted equitably so that no State shall receive less than 1 per centum nor more than 5 per centum of the total amount apportioned. Where the apportionment to any State under this section is less than $4,500 annually, the Secretary of the Interior may allocate not more than $4,500 of said appropriation to said State to carry out the purposes of this chapter when said State certifies to the Secretary of the Interior that it has set aside not less than $1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount of said purposes. So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this chapter until the close of the succeeding fiscal year, and if unexpended or unobligated at the end of such year, such sum is hereby authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation. The term fiscal year as used in this section shall be a period of twelve consecutive months from Oct. 1 through the succeeding Sept. 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year. (Aug. 9, 1950, ch. 658, § 4, 64 Stat. 432; Oct. 23, 1970, Pub. L. 91–503, title II, § 201, 84 Stat. 1101.)

AMENDMENTS

1970—Pub. L. 91–503 changed the method of apportionment of funds by eliminating reference to "to all the States" and added a definition of the term "fiscal year"

§ 777d. Certification of funds deducted for expenses and amounts apportioned to States; notification by State of intent to accept; use of funds where State fails to accept.

For each fiscal year beginning with the fiscal year ending June 30, 1951, the Secretary of the Interior shall certify to the Secretary of the Treasury, and to each State fish and game department, the sum which he has estimated to be deducted for administering and executing this chapter and the sum which he has apportioned to each State for such fiscal year. Any State desiring to avail itself of the benefits of this chapter shall notify the Secretary of the Interior to this effect within sixty days after it has received the certification referred to in this section. The sum apportioned to any State which fails to notify the Secretary of the Interior as herein provided is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the fish-research program of the Fish and Wildlife Service. (Aug. 9, 1950, ch. 658, § 5, 64 Stat. 432.)

§ 777e. Submission and approval of plans and projects.

(a) Apportionment of funds.

Any State desiring to avail itself of the benefits of this chapter shall, by its State fish and game department, submit programs or projects for fish restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this chapter from funds apportioned under this chapter upon his approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this chapter by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any fish restoration and management project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the Interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said appropriation as represents the share of the United States payable under this chapter on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive fishery plan or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this chapter. No payment of any money apportioned under this chapter shall be made on any comprehensive fishery plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) Definition.

If the State elects to avail itself of the benefits of this chapter by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purpose of this chapter as a fishery program, all other definitions notwithstanding.

(c) Costs.

Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State fish and game department charged against programs or projects supported by funds made available under this chapter shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State. (Aug. 9, 1950, ch. 658, § 6, 64 Stat. 432; Oct. 23, 1970, Pub. L. 91–503, title II, § 202, 84 Stat. 1102.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–503 added an alternative method of application for funds by the submission of a comprehensive fish and wildlife resource management plan for a period of five years based on projections for fifteen years, to be updated every three years, laid down a maximum limit of federal assistance of 75 percent of the estimated cost of the implementation of the plan, and in the existing method of application deleted reference to the Secretary of the Treasury and the requirement that the State pay 10 percent of the costs.

Subsecs. (b), (c). Pub. L. 91–503 added subsecs. (b) and (c).

§ 777f. Payments by United States.

(a) When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to fish, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States' pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this chapter by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 777e of this title, and this plan has been approved by the Secretary of the Interior, then the Secretary may, in his discretion, and under such rules and regulations, as he may prescribe, advance funds to the State for financing the United States' pro rata share agreed upon between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with the rules and regulations made pursuant to this chapter. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this chapter. Such payments shall be made against the said appropriation to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State. (Aug. 9, 1950, ch. 658, § 7, 64 Stat. 433; Oct. 23, 1970, Pub. L. 91–503, title II, § 202, 84 Stat. 1103.)

AMENDMENTS

1970—Pub. L. 91–503 divided existing provisions into subsecs. (a) and (b) and authorized advance payments by the Secretary to the States for financing the United States' pro rata share of the comprehensive fish and wildlife plan.

§ 777g. Maintenance of projects.

To maintain fish-restoration and management projects established under the provisions of this chapter shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this chapter may be considered as projects under this chapter. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this chapter, shall be vested in such State. (Aug. 9, 1950, ch. 658, § 8, 64 Stat. 433; Oct. 23, 1970, Pub. L. 91–503, title II, § 202, 84 Stat. 1103.)

AMENDMENTS

1970—Pub. L. 91–503 eliminated the restriction that not more than 25 percent of the Federal funds be set aside for maintenance projects.

§ 777h. Employment of personnel.

Out of the deductions set aside for administering and executing this chapter the Secretary of the Interior is authorized to employ such assistants, clerks, and other persons in the District of Columbia and elsewhere, to be taken from the eligible lists of the civil service; to rent or construct buildings outside of the District of Columbia; to purchase such supplies, materials, equipment, office fixtures, and apparatus; and to incur such travel and other expenses, including publication of technical and administrative reports, purchase, maintenance, and hire of passenger-carrying motor vehicles, as he may deem necessary for carrying out the provisions of this chapter. (Aug. 9, 1950, ch. 658, § 9, 64 Stat. 433.)

§ 777i. Rules and regulations.

The Secretary of the Interior is authorized to make rules and regulations for carrying out the provisions of this chapter. (Aug. 9, 1950, ch. 658, § 10, 64 Stat. 434.)

§ 777j. Repealed. Pub. L. 89–348, § 1(14), Nov. 8, 1965, 79 Stat. 1311.

Section, act Aug. 9, 1950, ch. 658, § 11, 64 Stat. 434, required the Secretary of the Interior to make an annual report to the Congress giving detailed information as to the projects established under this chapter and expenditures therefor.

§ 777k. Payments of funds to and cooperation with Puerto Rico, Guam, American Samoa, and the Virgin Islands.

The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Governor of Guam, the Governor of American Samoa, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects, as defined in section 777a of this title, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, Guam, American Samoa, and the Virgin Islands, out of money available for apportionment under this chapter, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum, for Guam one-third of 1 per centum, for American Samoa one-third of 1 per centum, and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, Guam, or the Virgin

Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation. (Aug. 9, 1950, ch. 658, § 12, 64 Stat. 434; July 2, 1956, ch. 489, § 4, 70 Stat. 473; Aug. 1, 1956, ch. 852, § 8, 70 Stat. 908; June 25, 1959, Pub. L. 86–70, § 16, 73 Stat. 143; Oct. 23, 1970, Pub. L. 91–503, title II, § 203, 84 Stat. 1103.)

AMENDMENTS

1970—Pub. L. 91–503 substituted "Secretary of Agriculture of Puerto Rico" for "Commissioner of Agriculture and Commerce of Puerto Rico", added American Samoa to the list of recipients, and substituted maximum limits of apportionment of one percent for Puerto Rico, one-third of one percent for Guam, one-third of one percent for American Samoa and one-third of one percent for Virgin Islands for maximum limit of $10,000 for Puerto Rico, Guam and Virgin Islands together.

14. Fishery Conservation and Management Act of 1976

P.L. 94–265 (90 Stat. 331)

AN ACT

To provide for the conservation and management of the fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Fishery Conservation and Management Act of 1976".

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SEC. 2. FINDINGS, PURPOSES AND POLICY

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

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(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourge the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska.

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

SEC. 3. DEFINITIONS

As used in this Act, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreation benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

Colenterata

Bamboo Coral—Acanella spp.;
Black Coral—Antipathes spp.;
Gold Coral—Callogoria spp.;
Precious Red Coral—Corallium spp.;
Bamboo Coral—Keratoisis spp.; and
Gold Coral—Parazoanthus spp.

Crustacea

Tanner Crab—Chionecetes tanneri;

Tanner Crab—Chionoecetes opilio;
Tanner Crab—Chionoecetes angulatus;
Tanner Crab—Chionoecetes bairdi;
King Crab—Paralithodes camtschatica;
King Crab—Paralithodes platypus;
King Crab—Paralithodes brevipes;
Lobster—Homarus americanus;
Dungeness Crab—Cancer magister;
California King Crab—Paralithodes californiensis;
California King Crab—Paralithodes rathbuni;
Golden King Crab—Lithodes aequispinus;
Northern Stone Crab—Lithodes maja;
Stone Crab—Menippe mercenaria; and
Deep-sea Red Crab—Geryon quinquedens.

Molusks

Red Abalone—Haliotis rufescens;
Pink Abalone—Haliotis corrugata;
Japanese Abalone—Haliotis kamtschatkana;
Queen Conch—Strombus gigas;
Surf Clam—Spisula solidissima; and
Ocean Quahog—Artica islandica.

Sponges

Glove Sponge—Hippiospongia canaliculata;
Sheepswool Sponge—Hippiospongia lachne;
Grass Sponge—Spongia graminea; and
Yellow Sponge—Spongia barbera.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil.

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characeristics; and

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary

of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(23) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(24) The term "United States", when used in a geographical context, means all the States thereof.

(25) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

SEC. 101. FISHERY CONSERVATION ZONE.

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

SEC. 102. EXCLUSIVE FISHERY MANAGEMENT AUTHORITY

The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

(1) All fish within the fishery conservation zone.

(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

SEC. 103. HIGHLY MIGRATORY SPECIES.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104. EFFECTIVE DATE.

This title shall take effect March 1, 1977.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless such foreign fishing—

(1) is authorized under subsection (b) or (c);

(2) is not prohibited by subsection (f); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

(b) EXISTING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202 (b) or (c)), if such agreement—

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each vessel;

(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, exceed such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel; and

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7).

(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this Act.

(e) ALLOCATION OF ALLOWABLE LEVEL.—The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the exclusive fishery management authority of the United States. In making any such determination, the Secretary of State and the Secretary shall consider—

(1) whether, and to what extent, the fishing vessels of such nations have traditionally engaged in such fishery;

(2) whether such nations have cooperated with the United States in, and made substantial contributions to, fishery research and the identification of fishery resources;

(3) whether such nations have cooperated with the United States in enforcement and with respect to the conservation and management of fishery resources; and

(4) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(f) RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(g) PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to the optimum yield from such fishery and the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b)(2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS

(a) NEGOTIATIONS.—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secrtary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976; by the United States unless it is in accordance with the provisions of section 201(c).

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the fishery conservation zone of the United States in relation to any such nation.

(e) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to a fishery conservation zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

SEC. 203. CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) IN GENERAL.—No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

(c) COMPUTATION OF 60-DAY PERIOD.—For purposes of subsection (a)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) CONGRESSIONAL PROCEDURES.—

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that

House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.—For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resoltuion is not in order.

SEC. 204. PERMITS FOR FOREIGN FISHING

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) ELIGIBILITY.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).

(2) FORMS. The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each vessel wishes to fish;

(D) the amount of fish or tonnage of catch contemplated for each vessel during the time such permit is in force; and

(E) the ocean area in which, and the season or period during which, such fishing will be conducted;

and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy of such material to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

(5) ACTION BY COUNCIL.—After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve the application, if he determines that the fishing described in the application will meet the requirements of this Act.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c)(1), (2), and (3).

(D) Any other conditions and restrictions related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating;

(C) any Council which has authority over any fishery specified in such application; and

(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce and Foreign Relations of the Senate.

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) FEES.—Reasonable fees shall be paid to the Secretary by the owner or operator of any fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees, which shall apply nondiscriminatorily to each foreign nation. In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12) SANCTIONS.—If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 307 the Secre-

tary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue the Secretary shall—

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate; or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

(c) REGISTRATION PERMITS.—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205. IMPORT PROHIBITIONS

(a) DETERMINATIONS BY SECRETARY OF STATE.—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those establishel under section 201 (c) and (d) and 204(b)(7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) DEFINITIONS.—As used in this section—

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a

continuing basis, the optimum yield from each fishery.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) GUIDELINES.—The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

(a) ESTABLISHMENT.—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(1) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(2) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(3) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(4) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(5) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(6) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(7) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(8) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) VOTING MEMBERS.—(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after the date of the enactment of this Act. As used in this subparagraph, (i) the term "list of qualified individuals" shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacany, and (ii) the term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

(2) Each voting member appointed to a Council pursuant to paragraph (1)(C) shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.

(3) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(c) NONVOTING MEMBERS.—(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS–18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties.

(e) TRANSACTION OF BUSINESS.—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement.

(f) STAFF AND ADMINISTRATION.—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. Each Council shall

publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND PANELS.—

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary;

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B), and any fishery management plan or amendment transmitted to it under section 304(c)(2);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act;

(4) submit to the Secretary—

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year,

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3), and

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, and number of hauls.

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(2) designate zones where, and period when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quanti-

ties of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery, and

(F) any other relevant considerations; and

(7) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) PROPOSED REGULATIONS.—Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 304 and 305.

(d) CONFIDENTIALITY OF STATISTICS.—Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

SEC. 304. ACTION BY THE SECRETARY.

(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall—

(1) review such plan or amendment pursuant to subsection (b); and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification.

(b) REVIEW BY THE SECRETARY.—The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with—

(1) the Secretary of State with respect to foreign fishing; and

(2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(c) PREPARATION BY THE SECRETARY.—The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or

(B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2).

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this Act, and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 305.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, pre-

pared by him, a provision establishing a limited access system described in section 303(b)(6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) ESTABLISHMENT OF FEES.—The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits.

(e) FISHERIES RESEARCH.—The Secretary shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(f) MISCELLANEOUS DUTIES.—(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned. No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

(a) IN GENERAL.—As soon as practicable after the Secretary—

(1) approves, pursuant to section 304 (a) and (b), any fishery management plan or amendment; or

(2) prepares, pursuant to section 304(c), any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.

(b) HEARING.—The Secretary may schedule a hearing, in accordance with section 553 of title 5, United States Code, on any fishery management plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome—

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

(c) IMPLEMENTATION.—The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan—

(1) after consideration of all relevant matters—

(A) presented to him during the 45-day period referred to in subsection (a), and

(B) produced in any hearing held under subsection (b); and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this Act, and any other applicable law.

To the extent practicable, such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.

(d) JUDICIAL REVIEW.—Regulations promulgated by the Secretary under this Act shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

(e) EMERGENCY ACTIONS.—If the Secretary finds that an emergency involving any fishery resources exists, he may—

(1) promulgate emergency regulations, without regard to subsections (a) and (c), to implement any fishery management plan, if such emergency so requires; or

(2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency.

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repromulgated for one additional period of not more than 45 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

(f) ANNUAL REPORT.—The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the con-

servation and management of fishery resources that were undertaken under this Act during the preceding calendar year.

(g) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

SEC. 306. STATE JURISDICTION

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

(b) EXCEPTION.—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C); or

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; and

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—

(A) within the boundaries of any State; or

(B) within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c).

SEC. 308. CIVIL PENALTIES

(a) ASSESSMENT OF PENALTY.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously send-

ing a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

SEC. 309. CRIMINAL OFFENSES.

(a) OFFENSES.—A person is guilty of an offense if he commits any act prohibited by—

(1) section 307(1) (D), (E), (F), or (H); or

(2) section 307(2).

(b) PUNISHMENT.—Any offense described in subsection (a)(1) is punishable by a fine of not more than $50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than $100,000, or imprisonment for not more than 1 year, or both.

(c) JURISDICTION.—There is Federal jurisdiction over any offense described in this section.

SEC. 310. CIVIL FORFEITURES.

(a) IN GENERAL.—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) JURISDICTION OF COURTS.—Any district court of the United States which has jurisdiction under section 311(d) shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

(1) the disposition of forfeited property,

(2) the proceeds from the sale of forfeited property,

(3) the remission or mitigation of forfeitures, and

(4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customers or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

(d) PROCEDURE.—(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311 (d) shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not les than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

SEC. 311. ENFORCEMENT.

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft

and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act.

(b) POWERS OF AUTHORIZED OFFICERS.—Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

(1) with or without a warrant or other process—

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;

(B) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(D) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

(E) seize any other evidence related to any violation of any provision of this Act;

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(c) ISSUANCE OF CITATIONS.—If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam, and any commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii.

Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(e) DEFINITION.—For purposes of this section—

(1) The term "provisions of this Act" includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201 (b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term "violation of any provision of this Act" includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS

Sections 307, 308, 309, 310, and 311 shall take effect March 1, 1977.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON LAW OF THE SEA TREATY

If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United States Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

* * * * *

SEC. 406. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) $5,000,000 for the fiscal year ending June 30, 1976.

(2) $5,000,000 for the transitional fiscal quarter ending September 30, 1976.

(3) $25,000,000 for the fiscal year ending September 30, 1977.

(4) $30,000,000 for the fiscal year ending September 30, 1978.

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15. Fishways at Rivers and Harbor Projects

33 U.S.C. 608

§ 608. Construction of fishways.

Whenever river and harbor improvements shall be found to operate (whether by lock and dam or otherwise), as obstructions to the passage of fish, the Secretary of the Army may, in his discretion, direct and cause to be constructed practical and sufficient fishways, to be paid for out of the general appropriations for the streams on which such fishways may be constructed. (Aug. 11, 1888, ch. 860, § 11, 25 Stat. 425.)

16. Fur Seal Act of 1966

16 U.S.C. 1151–1187

Sec.

§ 1151. Prohibitions.

It is unlawful, except as provided in this chapter or by regulation of the Secretary of the Interior, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States, or to use any port or harbor or other place under the jurisdiction of the United States for any purpose connected in any way with such taking, or for any person to transport, import, offer for sale, or possess at any port or place or on any vessel, subject to the jurisdiction of the United States, fur seals or the parts thereof, including, but not limited to, raw, dressed, or dyed fur seal skins, taken contrary

to the provisions of this chapter or the Convention, or for any person subject to the jurisdiction of the United States to refuse to permit, except within the territorial waters of the United States, a duly authorized official of Canada, Japan, or the Union of Soviet Socialist Republics to board and search any vessel which is outfitted for the harvesting of living marine resources and which is subject to the jurisdiction of the United States to determine whether such vessel is engaged in sealing contrary to the provisions of said Convention. (Pub. L. 89–702, title I, § 101, Nov. 2, 1966, 80 Stat. 1091.)

SHORT TITLE

Section 1 of Pub. L. 89–702 provided: "That this Act [which enacted this chapter, amended former section 2254 (g) of Title 5, repealed sections 631a—631q of this title, and amended provisions set out as a note preceding section 21 of Title 48, Territories and Insular Possessions] may be cited as the 'Fur Seal Act of 1966'."

§ 1152. Sealing permitted by Aleuts, Eskimos, and Indians.

(a) Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals and dispose of their skins in any manner after the skins have been officially marked and certified by a person authorized by the Secretary of the Interior, provided that the seals are taken only in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms.

(b) The authority contained in this section shall not apply to Indians, Aleuts, and Eskimos who are employed by any person for the purpose of taking fur seals or are under contract to deliver the skins to any person. (Pub. L. 89–702, title I, § 102, Nov. 2, 1966, 80 Stat. 1091.)

§ 1153. Scientific research on fur seal resources; use of fur seals for educational, scientific, or exhibition purposes.

The Secretary of the Interior shall (1) conduct such scientific research and investigations on the fur seal resources of the North Pacific Ocean as he deems necessary to carry out the obligations of the United States under the Convention, and (2) permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes. (Pub. L. 89–702, title I, § 103, Nov. 2, 1966, 80 Stat. 1091.)

§ 1154. Authority of Secretary of Interior; agreements.

(a) The Secretary shall (1) take and cure fur seal skins on the Pribilof Islands and on lands subject to the jurisdiction of the United States whenever he deems such taking and curing is necessary to carry out the provisions of the Convention or to manage the fur seal herd, (2) employ natives of the Pribilof Islands and, when necessary, other persons for taking and curing of fur seal skins pursuant to this section, and compensate them at rates to be determined by the Secretary, (3) deliver to authorized agents of the parties such fur seal skins as the parties are entitled under the Convention, (4) utilize such quantities of fur seal skins taken pursuant to this section or forfeited to, or seized by, the United States as the Secretary deems desirable for product development and market promotion, (5) provide for the disposal or destruction of any fur seal skins that are damaged or that are determined by the Secretary to have no value or use as luxury furs, (6) provide for the processing of such quantities of fur seal skins as he deems desirable, (7) provide from time to time for the sale, pursuant to such terms and conditions as the Secretary deems desirable, of fur seal skins and products of fur seals not otherwise used or disposed of pursuant to this chapter, and (8) deposit into the Pribilof Islands fund in the Treasury the proceeds from such sales, except that the Secretary shall pay annually to the Commission the proceeds from the sales of any fur seal skins that are taken contrary to the provisions of this subchapter and the regulations issued thereunder or that are forfeited to the United States.

(b) The Secretary is authorized to enter into agreements with any public or private agency or person for the purpose of carrying out the provisions of this subchapter, other than for the purpose of taking fur seals. (Pub. L. 89–702, title I, § 104, Nov. 2, 1966, 80 Stat. 1091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1182 of this title.

§ 1155. Enforcement provisions.

(a) Search of vessels; certificate of identification; exhibition to master.

Any person authorized to enforce the provisions of this chapter who has reasonable cause to believe that any vessel outfitted for the harvesting of living marine resources and subject to the jurisdiction of any of the parties to the Convention is violating the provisions of article III of the Convention may, except within the territorial waters of another nation, board and search such vessel. Such person shall carry a special certificate of identification issued by the Secretary of the Interior or Secretary of the Treasury which shall be in English, Japanese, and Russian and which shall be exhibited to the master of the vessel upon request.

(b) Seizure or arrest; notice; delivery of vessel or person to authorized officials; surveillance.

If, after boarding and searching such vessel, such person continues to have reasonable cause to believe that such vessel, or any person on board, is violating said article, he may seize such vessel or arrest such person, or both. The Secretary of State shall, as soon as practicable, notify the party having jurisdiction over the vessel or person of such seizure or arrest.

The Secretary of the Interior or the Secretary of the Treasury, upon request of the Secretary of State, shall deliver the seized vessel or arrested person, or both, as promptly as practicable to the authorized officials of said party: *Provided,* That whenever said party cannot immediately accept such delivery, the Secretary of the Interior or the Secretary of the Treasury may, upon request of the Secretary of State, keep the vessel or person under surveillance within the United States.

(c) Testimony of enforcement agents.

At the request of said party, the Secretary of the Interior or the Secretary of the Treasury shall direct

the person authorized to enforce the provisions of this chapter to attend the trial as a witness in any case arising under said article or give testimony by deposition, and shall produce such records and files or copies thereof as may be necessary to establish the offense. (Pub. L. 89–702, title I, § 105, Nov. 2, 1966, 80 Stat. 1092.)

§ 1156. North Pacific Fur Seal Commission; appointment of Commissioner and Deputy Commissioner; duties, compensation, and travel expenses.

The President shall appoint to the Commission a United States Commissioner who shall serve at the pleasure of the President. The President may also appoint a Deputy United States Commissioner who shall serve at the pleasure of the President. The Deputy Commissioner shall be the principal adviser of the Commissioner, and shall perform the duties of the Commissioner in the case of his death, resignation, absence, or illness. The Commissioner and the Deputy Commissioner shall receive no compensation for their services. The Commissioners may be paid travel expenses and per diem in lieu of subsistence at the rates authorized by section 5 of the Administrative Expense Act of 1946 when engaged in the performance of their duties. (Pub. L. 89–702, title I, § 106, Nov. 2, 1966, 80 Stat. 1092.)

REFERENCES IN TEXT

Section 5 of the Administrative Expense Act of 1946, referred to in the text, is now covered by sections 5703 and 5707 of Title 5, Government Organization and Employees.

§ 1157. Same; acceptance or rejection by Secretaries of State and Interior of recommendations.

The Secretary of State, with the concurrence of the Secretary of the Interior, is authorized to accept or reject, on behalf of the United States, recommendations made by the Commission pursuant to article V of the Convention. (Pub. L. 89–702, title I, § 107, Nov. 2, 1966, 80 Stat. 1093.)

§ 1158. Same; Federal agency consultations with and technical assistance to Secretary of Interior or Commission; reimbursement for assistance.

The head of any Federal agency is authorized to consult with and provide technical assistance to the Secretary of the Interior or the Commission whenever such assistance is needed and can reasonably be furnished in carrying out the provisions of this subchapter. Any Federal agency furnishing assistance hereunder may expend its own funds for such purposes, with or without reimbursement. (Pub. L. 89–702, title I, § 108, Nov. 2, 1966, 80 Stat. 1093.)

§ 1159. Definitions.

As used in this subchapter the term—

(a) "Convention" means the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington, on February 9, 1957, by the parties, as amended by the protocol signed at Washington, on October 8, 1963, by the parties.

(b) "Party" or "parties" means the United States of America, Canada, Japan, and the Union of Soviet Socialist Republics.

(c) "Commission" means the North Pacific Fur Seal Commission established pursuant to article V of the Convention.

(d) "Sealing" means the taking of fur seals.

(e) "North Pacific Ocean" means the waters of the Pacific Ocean north of the thirtieth parallel of north latitude, including the Bering, Okhotsk, and Japan Seas.

(f) "Import" means to land on, or bring into, or attempt to land on, or bring into any place subject to the jurisdiction of the United States. (Pub. L. 89–702, title I, § 109, Nov. 2, 1966, 80 Stat. 1093.)

SUBCHAPTER II.—ADMINISTRATION OF THE PRIBILOF ISLANDS

§ 1161. Special reservation; purposes.

The Pribilof Islands shall continue to be administered as a special reservation by the Secretary of the Interior for the purposes of conserving, managing, and protecting the North Pacific fur seals and other wildlife, and for other purposes. (Pub. L. 89–702, title II, § 201, Nov. 2, 1966, 80 Stat. 1093.)

§ 1162. Contracts, agreements, leases, or permits for use of Government-owned property for specified purposes.

The Secretary, in carrying out the provisions of this subchapter, is authorized to enter into contracts or agreements or leases with, or to issue permits to, public or private agencies or persons, including the natives of said islands, in accordance with such terms and conditions as he deems desirable for the use of any Government-owned real or personal property located on the Pribilof Islands, for the furnishing of accommodations for tourists and other visitors, for educational, recreational, residential, or commercial purposes, for the operation, maintenance, and repair of Government-owned facilities and utilities, for the transportation and storage of food and other supplies, and for such other purposes as the Secretary deems desirable. (Pub. L. 89–702, title II, § 202, Nov. 2, 1966, 80 Stat. 1093.)

§ 1163. Facilities, services, supplies, and equipment for natives, Federal employees and their dependents, tourists, and other persons and for carrying out this section; credit of proceeds to appropriation current at time of receipt.

(a) In carrying out the provisions of this subchapter, the Secretary is also authorized—

(1) to provide, with or without reimbursement, the natives of the Pribilof Islands with such facilities, services, and equipment as he deems necessary, including, but not limited to, food, fuel, shelter, transportation, and education,

(2) to provide the employees of the Department of the Interior and other Federal agencies and their dependents, and tourists and other persons, at reasonable rates to be determined by the Secretary, with such facilities, services, and equipment as he deems necessary, including, but not limited to, food, fuel, shelter, transportation, and education,

(3) to purchase, transport, store, and distribute such supplies and equipment to carry out the provisions of this section as the Secretary deems necessary, and

(4) to purchase, construct, operate, and maintain such facilities as may be necessary to carry out the provisions of this section.

(b) The proceeds from the furnishing of facilities services, supplies, and equipment pursuant to this section shall be credited to the appropriation current at the time the proceeds are received. (Pub. L. 89–702, title II, § 203, Nov. 2, 1966, 80 Stat. 1093.)

§ 1164. Agreements for education of natives in manner of education of citizens and for furnishing food, shelter, transportation, and other facilities, services, and equipment to natives.

(a) The Secretary is authorized to enter into an agreement with the Governor of the State of Alaska pursuant to which the State shall assume full responsibility for furnishing education to the natives of the Pribilof Islands. The Secretary is also authorized to enter into agreements with said Governor pursuant to which the State shall furnish to such natives adequate food, shelter, transportation, and such other facilities, services, and equipment as the Secretary deems necessary.

(b) Any agreement entered into pursuant to this section for the transfer to the State of the responsibility for furnishing education to the natives of the Pribilof Islands shall provide, in addition to such terms and conditions as the Secretary deems desirable, that the State of Alaska, in assuming such responsibility, shall meet the educational needs of the said natives in the same manner as the State meets the educational needs of all of its citizens, including the furnishing of necessary facilites therefor. (Pub. L. 89–702, title II, § 204, Nov. 2, 1966, 80 Stat. 1094.)

§ 1165. Medical and dental care for natives, Federal employees and their dependents, tourists, and other persons; facilities, services, and equipment for carrying out this section; costs chargeable to budget of Secretary of Health, Education, and Welfare; authority and responsibility of Secretary under other laws unaffected.

The Secretary of Health, Education, and Welfare shall provide medical and dental care to the natives of the Pribilof Islands, with or without reimbursement, as provided by other law. He is authorized to provide such care to Federal employees and their dependents and tourists and other persons in the Pribilof Islands at reasonable rates to be determined by him. He may purchase, lease, construct, operate, and maintain such facilities, supplies, and equipment as he deems necessary to carry out the provisions of this section and the costs of such items, including medical and dental care, shall be charged to the budget of the Secretary of Health, Education, and Welfare. Nothing in this chapter shall be construed as superseding or limiting the authority and responsibility of the Secretary of Health, Education, and Welfare under the Act of August 5, 1954, as amended, or any other law with respect to medical and dental care of natives or other persons in the Pribilof Islands. (Pub. L. 89–702, title II, § 205, Nov. 2, 1966, 80 Stat. 1094.)

REFERENCES IN TEXT

The Act of August 5, 1954, as amended, referred to in the text, is classified to section 2001 et seq. of Title 42, The Public Health and Welfare.

§ 1166. St. Paul Island townsite.

(a) Declaration of purposes; survey; patent to trustee; conveyance by trustee for homesite, commercial, or other purposes; uses of lots or tracts; restriction against alienation without Secretary's approval; exemptions: levy and sale for debts and claims of adverse possession or prescription; taxation and levy and sale under Alaska State law.

For the purpose of fostering self-sufficiency among the natives of the Pribilof Islands, and in order that they may enjoy local self-government, and to facilitate the establishment by such natives of a municipal corporation under the laws of the State of Alaska, the Secretary is authorized to set apart so much of the land on St. Paul Island as he determines necessary to establish a townsite. The Secretary shall survey the townsite into lots, blocks, streets, and alleys and he may issue a patent therefor to a trustee appointed by him, when he is satisfied that a viable self-governing community which is capable of providing adequate municipal services is established or will be established prior to the conveyance by the trustee of title to any property to the natives of the Pribilof Islands. The trustee is authorized to convey to the individual natives of the Pribilof Islands title to improved or unimproved lots or tracts of land within such townsite for homesite, commercial, or other purposes not inconsistent with the purpose for which the Secretary administers said islands, upon payment of an amount to be determined by the Secretary. Any deed issued by the trustee shall provide, in addition to such terms and conditions relating to the use of said lots or tracts as the Secretary deems necessary, that the title conveyed is inalienable for a period of twenty years from the date of conveyance except upon approval of the Secretary. Any deed issued after twenty years from the date of conveyance shall not require approval of the Secretary. Any lot or tract conveyed by the trustee to said natives shall not, except as provided in section 483a of Title 25, be subject to levy and sale in satisfaction of the debts, contracts, or liabilities of the purchaser or to any claims of adverse possession or to claims of prescription, except that such lot or tract shall be subject to taxation and to levy and sale in satisfaction thereof under the laws of the State of Alaska.

(b) Purchase price; factors considered; terms and conditions for payment.

In determining the amount to be paid for the purchase of lots or tracts under subsection (a) of this section, the Secretary shall consider the economic status of the natives of the Pribilof Islands, including the factor of isolation, the restrictive nature of the title to be conveyed, the improvements, if any, placed on the property by the purchaser and such other factors as he deems pertinent: *Provided*, That payment shall be made in accordance with such terms and conditions as the Secretary deems desirable.

(c) Sale proceeds; availability for municipal services.

The net proceeds from the sale, pursuant to this section, of improved or unimproved lots or tracts shall be made available to the established local governing body to be used with other proceeds available to such body for the purpose of providing adequate municipal services to persons inhabiting the islands. In addition, at the close of the first fiscal year in which there is established a municipal corporation

as provided in this section, the Secretary of the Interior shall certify to the Secretary of the Treasury for payment from the gross receipts of the Pribilof Islands fund, after deducting from such fund all costs to the United States in carrying out the provisions of this chapter, the sum of $50,000 to such community to assist it in providing adequate municipal services, and, at the close of each succeeding four fiscal years, he shall pay from such fund the sums of $40,000, $30,000, $20,000, and $10,000, respectively.

(d) Conveyance of unsold lands; terms and conditions.

Upon approval by the Secretary, the trustee shall convey, with or without reimbursement, any improved or unimproved land which was authorized to be sold under subsection (a) of this section, and which is unsold five years after incorporation, and which is not needed in connection with the Federal activities on said islands, to the municipality for the purposes of this section: *Provided*, That a conveyance pursuant to this subsection shall be subject to such terms and conditions as the Secretary deems necessary to enable him to administer the Pribilof Islands as provided in this subchapter.

(e) Conveyance of surveyed streets and alleys; reservation of rights-of-way for surveying and establishment of streets and alleys; term of reservation; conveyance of lands outside townsite boundaries: conditions.

The trustee shall convey to the municipality at the time of incorporation all surveyed streets and alleys of the townsite. All deeds issued by the trustee shall contain a reservation to the trustee of rights-of-way for streets and alleys to be surveyed and established upon and across land conveyed to the natives of the Pribilof Islands whenever he determines that it would be in the interest of the native owner to establish such streets and alleys. Such reservation shall be for a term not to exceed ten years. In addition the Secretary may convey without reimbursement to the municipality such lands or interests therein outside the townsite boundaries for any purpose subject to such conditions as the Secretary deems desirable to carry out the purposes of this chapter.

(f) Valid existing rights unaffected.

The provisions of this section shall not affect any valid existing rights. (Pub. L. 89–702, title II, § 206, Nov. 2, 1966, 80 Stat. 1094.)

§ 1167. Penalties for violations.

Any person who violates or fails to comply with any regulation issued by the Secretary of the Interior under this subchapter relating to the use and management of the Pribilof Islands or to the conservation and protection of the fur seals or wildlife or other natural resources located thereon shall be fined not more than $500 or be imprisoned not more than six months, or both. (Pub. L. 89–702, title II, § 207, Nov. 2, 1966, 80 Stat. 1095.)

§ 1168. Civil service retirement benefits.

(a) Credit of services performed by natives.

Service by natives of the Pribilof Islands engaged in the taking and curing of fur seal skins and other activities in connection with the administration of such islands prior to January 1, 1950, as determined by the Secretary of the Interior based on records available to him, shall be considered for purposes of credit under the Civil Service Retirement Act, as amended, as civilian service performed by an employee, as defined in said Act.

(b) Adjustment of annuities.

The annuity of any person or the annuity of the survivor of any person who shall have performed service described in subsection (a) of this section, and who prior to November 2, 1966, died or shall have been retired on annuity payable from the civil service retirement and disability fund, shall, upon application filed by the annuitant within one year after November 2, 1966, be adjusted, effective as of the first day of the month immediately following November 2, 1966, so that the amount of the annuity will be the same as if such subsection had been in effect at the time of such person's retirement or death.

(c) Nonentitlement to lump-sum benefits.

In no case shall credit for the service described in subsection (a) of this section entitle a person to the benefits of section 11(h) of the Civil Service Retirement Act.

(d) Payment from civil service retirement and disability fund; reimbursement of such fund from Pribilof Islands fund; reimbursement as cost of administration of fur seal program.

Notwithstanding any other provision of this chapter or any other law, benefits under the Civil Service Retirement Act made available by reason of the provisions of this section shall be paid from the civil service retirement and disability fund subject to reimbursement to such fund from the gross receipts of the Pribilof Islands fund, established in section 1187 of this title, for the purpose of compensating said retirement fund for the cost, as determined by the Civil Service Commission during each fiscal year, of benefits provided by this section. This reimbursement to the civil service retirement fund shall be considered a cost of administering the fur seal program. (Pub. L. 89–702, title II, § 208 (a), (b), (d), (e), Nov. 2, 1966, 80 Stat. 1096.)

REFERENCES IN TEXT

The Civil Service Retirement Act, as amended, referred to in subsec (a), is classified to section 8301 et seq. of Title 5, Government Organization and Employees.

Section 11(h) of the Civil Service Retirement Act, referred to in subsec. (c), is classified to section 8342 of Title 5.

CODIFICATION

Section is comprised of subsecs. (a), (b), (d), and (e) of section 208 of Pub. L. 89–702. Section 208(c) of Pub. L. 89–702 amended section 4(g) of the Civil Service Retirement Act, now covered by section 8334(g) of Title 5, Government Organization Employees.

SUBCHAPTER III.—PROTECTION OF SEA OTTERS ON THE HIGH SEAS

§ 1171. Prohibitions; evidence.

(a) It is unlawful, except as provided in this chapter or by regulations issued by the Secretary of the Interior, for any person subject to the jurisdiction of the United States to take or engage in the taking of sea otters on the high seas beyond the territorial waters of the United States, or to possess, transport, sell, purchase, or offer to sell or purchase

sea otters or their parts taken on the high seas, or to destroy, abandon, or waste needlessly sea otters on the high seas.

(b) The possession of sea otters or any part thereof by any person contrary to the provisions of this chapter shall constitute prima facie evidence that the sea otter or part thereof was taken, purchased, sold, or transported in violation of the provisions of this chapter or the regulations issued thereunder. (Pub. L. 89–702, title III, § 301, Nov. 2, 1966, 80 Stat. 1096.)

§ 1172. Sale or other disposition of forfeited or seized sea otter skins and products; deposit of proceeds in Pribilof Islands fund in the Treasury.

The Secretary is authorized, from time to time, to sell, pursuant to such terms and conditions as he deems desirable, or otherwise dispose of, sea otter skins and all the products derived from sea otters that are forfeited to, or seized by, the United States pursuant to this chapter, or that are taken by the Secretary on the high seas or within the Aleutian Islands National Wildlife Refuge. The proceeds of such sales shall be deposited in the Pribilof Islands fund in the Treasury. (Pub. L. 89–702, title III, § 302, Nov. 2, 1966, 80 Stat. 1097.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1182 of this title.

SUBCHAPTER IV.—GENERAL PROVISIONS

§ 1181. Enforcement provisions.

(a) Seizures and forfeitures.

Every vessel subject to the jurisdiction of the United States that is employed in any manner in connection with a violation of the provision of this chapter, including its tackle, apparel, furniture, appurtenances, cargo, and stores shall be subject to forfeiture and all fur seals or sea otters, or parts thereof, taken or retained in violation of this chapter or the monetary value thereof shall be forfeited.

(b) Application of related laws.

All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of a vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores for violation of the customs laws, the disposition of such vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter. (Pub. L. 89–702, title IV, § 401, Nov. 2, 1966, 80 Stat. 1097.)

§ 1182. Additional enforcement provisions.

(a) Joint responsibility; State officers and employees as Federal law enforcement agents; non-Federal employees for civil service purpose.

Enforcement of the provisions of this chapter is the joint responsibility of the Secretary of the Interior, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating. In addition, the Secretary of the Interior may designate officers and employees of the States of the United States to enforce the provisions of this chapter which relate to persons or vessels subject to the jurisdiction of the United States. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Issuance of warrants or other process.

The judges of the United States district courts and the United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in Federal district courts, as may be required for enforcement of this chapter and any regulations issued thereunder.

(c) Execution of warrants or other process by enforcement agents.

Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter.

(d) Arrests and searches by enforcement agents.

Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any person committing in his presence or view a violation of this chapter or the regulations issued thereunder;

(2) with a warrant or other process or without a warrant, if he has reasonable cause to believe that a vessel subject to the jurisdiction of the United States or any person on board is in violation of any provision of this chapter or the regulations issued thereunder, to search such vessel and to arrest such person.

(e) Seizures of vessels, etc.

Such person so authorized may seize any vessel subject to the jurisdiction of the United States, together with its tackle, apparel, furniture, appurtenances, cargo, and stores, used or employed contrary to the provisions of this chapter or the regulations issued hereunder or which it reasonably appears has been used or employed contrary to the provisions of this chapter or the regulations issued hereunder.

(f) Seizures and disposition of fur seals or sea otters.

Such person so authorized may seize, whenever and wherever lawfully found, all fur seals or sea otters taken or retained in violation of this chapter or the regulations issued thereunder. Any fur seals so seized or forfeited to the United States pursuant to this chapter shall be disposed of in accordance with the provisions of section 1154 of this title. Any sea otters so seized or forfeited to the United States pursuant to this chapter shall be disposed of in accordance with the provisions of section 1172 of this title. (Pub. L. 89–702, title IV, § 402, Nov. 2, 1966, 80 Stat. 1097.)

CHANGE OF NAME

References to United States commissioners to be deemed references to United States magistrates, see Pub. L. 90–

578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, which provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under section 631 of Title 28 as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 1183. Regulations.

The Secretary of the Interior is authorized to issue regulations to carry out the provisions of this chapter. (Pub. L. 89–702, title IV, § 403, Nov. 2, 1966, 80 Stat. 1098.)

§ 1184. Penalties for violations.

Any person violating the provisions of subchapter I or III of this chapter or the regulations issued thereunder shall be fined not more than $2,000, or imprisoned not more than one year, or both. (Pub. L. 89–702, title IV, § 404, Nov. 2, 1966, 80 Stat. 1098.)

§ 1185. Contracts or agreements for research.

The Secretary of the Interior, in carrying out the provisions of this chapter, is authorized to enter into contracts or agreements for research with any person or public or private agency. (Pub. L. 89–702, title IV, § 405, Nov. 2, 1966, 80 Stat. 1098.)

§ 1186. Definitions.

(a) The term "person" as used in this chapter means any individual, partnership, corporation, or association.

(b) The terms "take" or "taking" or "taken" as used in this chapter means to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

(c) The term "natives of the Pribilof Islands" as used in this chapter means any Indians, Aleuts, or Eskimos who permanently reside on said island.

(d) The term "Pribilof Islands" as used in this chapter means the islands of St. Paul and St. George, Walrus and Otter Islands, and Sea Lion Rock. (Pub. L. 89–702, title IV, § 406, Nov. 2, 1966, 80 Stat. 1098.)

§ 1187. Pribilof Islands fund; establishment; authorization of appropriations.

There is established a Pribilof Islands fund and there are authorized to be appropriated such sums as may be necessary from the fund and from other funds in the Treasury to carry out the provisions of this chapter and the provisions of section 6(e) of the Alaska Statehood Act which provides for the payment to the State of Alaska of certain specified proceeds deposited into said fund. (Pub. L. 89–702, title IV, § 407, Nov. 2, 1966, 80 Stat. 1098.)

REFERENCES IN TEXT

Alaska Statehood Act, referred to in text, is Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1168 of this title.

17. Great Lakes Fisheries Act of 1956

16 U.S.C. 931–939c

Sec.
931. Definitions.
932. Commissioners; appointment, number, and compensation.
933. Advisory Committee; appointment and number of members; factors in selection of members; membership on other committees; compensation; meetings.
934. Repealed.
935. Acquisition of real property; construction and operation of lamprey control works; entry into agreements for construction and operation of works.
936. Secretary of Interior; authority to transfer lamprey control projects and act on behalf of United States Section.
937. United States Section as agency of United States.
938. Notice of proposals.
939. Transmission of recommendations.
939a. Cooperation with other agencies.
939b. State laws and regulations.
939c. Appropriations.

§ 931. Definitions.

As used in this chapter, the term—

(a) "Convention" means the Convention on Great Lakes Fisheries between the United States of America and Canada signed at Washington, September 10, 1954;

(b) "Commission" means the Great Lakes Fishery Commission provided for by article II of the convention;

(c) "United States Section" means the United States Commissioners on the Commission;

(d) "Great Lakes State" means any of the following States: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, or Wisconsin;

(e) "Great Lakes" means any of the following bodies of water: Lake Ontario (including the Saint Lawrence River from Lake Ontario to the forty-fifth parallel of latitude), Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, or Lake Superior. (June 4, 1956, ch. 358, § 2, 70 Stat. 242.)

SHORT TITLE

Congress, in enacting this chapter, provided by section 1 of act June 4, 1956, that it should be popularly known as the "Great Lakes Fishery Act of 1956".

SEPARABILITY OF PROVISIONS

Section 14 of act June 4, 1956, provided that: "If any provision of this Act [this chapter] or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act [this chapter] and the applicability of such provision to other circumstances or persons shall not be affected thereby".

§ 932. Commissioners; appointment, number, and compensation.

The United States shall be represented on the Commission by three Commissioners to be appointed

by the President, to serve as such during his pleasure, and to receive no compensation for their services as such Commissioners. Of such Commissioners—

(a) one shall be an official of the United States Government; and

(b) two shall be persons residing in Great Lakes States, duly qualified by reason of knowledge of the fisheries of the Great Lakes, of whom one shall be an official of a Great Lakes State: *Provided, however,* That the Commissioners appointed under this subsection shall not be residents of the same State. (June 4, 1956, ch. 358, § 3, 70 Stat. 242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 934 of this title.

ALTERNATE UNITED STATES COMMISSIONERS

Secretary of State authorized to designate Alternate United States Commissioners, see sections 2672a and 2672b of Title 22, Foreign Relations and Intercourse.

§ 933. Advisory Committee; appointment and number of members; factors in selection of members; membership on other committees; compensation; meetings.

(a) The United States Section shall appoint an advisory committee for each of the Great Lakes, upon which committee each State bordering on the lake may be represented by not more than four members. In making such appointments, the United States Section shall make its selection for each State from a list proposed by the Governor of that State; and shall give due consideration to the interests of—

(1) State agencies having jurisdiction over fisheries;

(2) the commercial fishing industry of the lake;

(3) the sports fishing of the lake; and

(4) the public at large.

(b) A member of the advisory committee for one lake may also be a member of the advisory committee for one or more other lakes.

(c) The members of the advisory committee shall receive no compensation from the Government of the United States for their services as such members. Not more than five members of all the committees, designated by the committees and approved by the United States Section, may be paid by the Government of the United States for transportation expenses and per diem incident to attendance at each meeting of the Commission or of the United States Section.

(d) The members of the advisory committee for each lake shall be invited to attend all nonexecutive meetings of the United States Section relating to that lake and at such meetings shall be granted opportunity to examine and be heard on all proposed recommendations, programs, and activities relating to that lake. (June 4, 1956, ch. 358, § 4, 70 Stat. 243.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 934 of this title.

§ 934. Repealed. Pub. L. 92-471, title II, § 203(a), Oct. 9, 1972, 86 Stat. 787.

Section, act June 4, 1956, ch. 358, § 5, 70 Stat. 243, provided that service of individuals appointed as United States Commissioners shall not be treated as service for the purposes of certain sections of Title 18, Crimes and Criminal Procedure, and Title 5, Government Organization and Employees.

§ 935. Acquisition of real property; construction and operation of lamprey control works; entry into agreements for construction and operation of works.

In order to carry out the obligations of the United States under the Convention, the United States Section is authorized—

(a) to acquire any real property, or any interest therein, by purchase, exchange, gift, dedication, condemnation, or otherwise;

(b) to construct, operate, and maintain any project or works designed to facilitate compliance with the provisions of the Convention relating to the sea lamprey control program; and

(c) to enter into contract or agreement with any State or other public agency or private agency or individual for the construction, operation, or maintenance of any such project or works. (June 4, 1956, ch. 358, § 6, 70 Stat. 243.)

§ 936. Secretary of Interior; authority to transfer lamprey control projects and act on behalf of United States Section.

The Secretary of the Interior is authorized, upon the request of the United States Section—

(a) to transfer to the United States Section any lamprey control project or works under his jurisdiction now existing or now under construction; and

(b) to act for or on behalf of the United States Section in the exercise of the powers granted by this chapter. (June 4, 1956, ch. 358, § 7, 70 Stat. 243.)

§ 937. United States Section as agency of United States.

The United States Section shall, for the purposes of these [1] provisions of Title 28, relating to claims against the United States and tort claims procedure, be deemed to be an agency of the United States. (June 4, 1956, ch. 358, § 8, 70 Stat. 243.)

REFERENCES IN TEXT

Provisions of Title 28, relating to claims against the United States, referred to in the text, include sections 1346 (b), 2501 et seq., and 2671 et seq., of Title 28, Judiciary and Judicial Procedure.

§ 938. Notice of proposals.

At least thirty days before approving a proposal to utilize a lamprey control measure or install a device in any stream, the United States Section shall cause notice of such proposal to be sent to the

[1] So in original. Probably should read "those".

official agency having jurisdiction over fisheries in each of the States through which the stream flows. (June 4, 1956, ch. 358, § 9, 70 Stat. 243.)

§ 939. Transmission of recommendations.

The Secretary of State shall upon the receipt from the Commission of any recommendation of a conservation measure made in accordance with article IV of the Convention transmit a copy of the recommendation with his comments thereon to the Governor of each Great Lakes State for consideration and such action as may be found to be appropriate. The Secretary of State shall also inform such other public agencies as he may deem appropriate. (June 4, 1956, ch. 358, § 10, 70 Stat. 244.)

§ 939a. Cooperation with other agencies.

Any agency of the United States Government is authorized to cooperate with the United States Section in the conduct of research programs and related activities and, on a reimbursable or other basis, to enter into agreements with the United States Section for the purpose of assisting it in carrying out the program for the control of lamprey populations. (June 4, 1956, ch. 358, § 11, 70 Stat. 244.)

§ 939b. State laws and regulations.

Nothing in this chapter shall be construed as preventing any of the Great Lakes States from making or enforcing laws or regulations within their respective jurisdictions so far as such laws or regulations do not conflict with the Convention or this chapter. (June 4, 1956, ch. 358, § 12, 70 Stat. 244.)

§ 939c. Appropriations.

There is hereby authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this chapter. (June 4, 1956, ch. 358, § 13, 70 Stat. 244.)

18. Importation of Certain Mollusks

65 Stat. 335 (Pub. L. 82–152)

AN ACT

To prevent the entry of certain mollusks into the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture shall establish such facilities for, and prescribe such regulations governing, the inspection and treatment of produce, baggage, salvaged war materials, and other goods entering the United States from areas infested with any terrestrial or fresh-water mollusk, as he considers necessary to prevent the entry of such mollusks into the United States. Whoever violates any such regulation or imports such a mollusk into the United States shall be fined not more than $500 or imprisoned not more than one year, or both. The term "United States", as used in this Act in a territorial sense, means the forty-eight States, the District of Columbia, the possessions of the United States (except those which the Secretary of Agriculture finds are infested with such mollusks), and the Canal Zone.

Approved September 22, 1951.

19. Increase of Duty on Importation of Fish

19 U.S.C. 1323

§ 1323. Conservation of fishery resources.

Upon the convocation of a conference on the use or conservation of international fishery resources, the President shall, by all appropriate means at his disposal, seek to persuade countries whose domestic fishing practices or policies affect such resources, to engage in negotiations in good faith relating to the use or conservation of such resources. If, after such efforts by the President and by other countries which have agreed to engage in such negotiations, any other country whose conservation practices or policies affect the interests of the United States and such other countries, has, in the judgment of the President, failed or refused to engage in such negotiations in good faith, the President may, if he is satisfied that such action is likely to be effective in inducing such country to engage in such negotiations in good faith; increase the rate of duty on any fish (in any form) which is the product of such country, for such time as he deems necessary, to a rate not more than 50 percent above the rate existing on July 1, 1934. (June 17, 1930, ch. 497, title III, § 323, as added Oct. 11, 1962, Pub. L. 87–794, title II, § 257(i), 76 Stat. 883.)

20. Killing of Alaska Sea Lions

16 U.S.C. 659

§ 659. Sea lions; acts prohibiting killing repealed.

All Acts and parts of Acts making it unlawful to kill sea lions, as game animals or otherwise, in the waters of the Territory of Alaska are repealed. (As amended Oct. 21, 1972, Pub. L. 92–522, title I, § 113 (b), 86 Stat. 1042.)

AMENDMENTS

1972—Pub. L. 92–522 struck out proviso prohibiting the killing of sea lions in the waters of Alaska except under rules and regulations prescribed by the Secretary of the Interior.

21. Management of Seals in Alaska

16 U.S.C. 655–657

§ 655. Agents to be disinterested.

The persons charged with the management of the seal fisheries in Alaska, and the performance of such other duties as may be assigned to them by the Secretary of the Interior, shall never be interested directly or indirectly in any lease of the right to take seals, nor in any proceeds or profits thereof either as owner, agent, partner, or otherwise. (R. S. §§ 1973, 1975; Feb. 14, 1903, ch. 552, § 7, 32 Stat. 828; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 656. Same; administering oaths and taking testimony.

The agents are empowered to administer oaths in all cases relating to the service of the United States, and to take testimony in Alaska for the use of the Government in any matter concerning the public revenue. (R. S. § 1976.)

DERIVATION

Act Mar. 5, 1872, ch. 31, § 3, 17 Stat. 35.

§ 657. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

22. Marine Mammal Commission

16 U.S.C. 1401–1407

(See Marine Mammal Protection under this title)

23. Marine Mammal Protection

16 U.S.C. 1361, 1362, 1371–1384, 1401–1407

Sec.

§ 1361. Congressional findings and declaration of policy.

The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the optimum carrying capacity of the habitat.

(Pub. L. 92–522, § 2, Oct. 21, 1972, 86 Stat. 1027.)

§ 1362. Definitions.

For the purposes of this chapter—

(1) The term "depletion" or "depleted" means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter II of this chapter, determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered Species Act of 1973; or

(C) is below the optimum carrying capacity for the species or stock within its environment.

(2) The terms "conservation" and "management" means the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term "district court of the United States" includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term "humane" in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term "marine mammal" means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this chapter, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(6) The term "marine mammal product" means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(7) The term "moratorium" means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this chapter.

(8) The term "optimum carrying capacity" means the ability of a given habitat to support the optimum sustainable population of a species or population stock in a healthy state without diminishing the ability of the habitat to continue that function.

(9) The term "optimum sustainable population" means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term "person" includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term "population stock" or "stock" means a group of marine mammals of the same

species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12) The term "Secretary" means—

(A) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(B) the Secretary of the Interior as to all responsibiilty, authority, funding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

(13) The term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands.

(15) The term "waters under the jurisdiction of the United States" means—

(A) the territorial sea of the United States, and

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured. (Pub. L. 92–522, § 3, Oct. 21, 1972, 86 Stat. 1028, amended Pub. L. 93–205, § 13(e)(1), Dec. 28, 1973, 87 Stat. 903; amended Pub. L. 94–265, § 404(a), Apr. 13, 1976, 90 Stat. 360.)

AMENDMENTS

1976—Section 404(a) of Pub. L. 94–265 provided for a 200-nautical mile outer boundary.

1973—Par. (1)(B) Pub. L. 93–205 substituted "Endangered Species Act of 1973" for "Endangered Species Conservation Act of 1969".

EFFECTIVE DATE OF 1976 AMENDMENT

Sec. 404(b) of Public Law 94–265 provided that the amendment made by sec. 404(a) would take effect on March 1, 1977.

SUBCHAPTER I.—CONSERVATION AND PROTECTION OF MARINE MAMMALS

§ 1371. Moratorium on taking and importing marine mammals and marine mammal products.

(a) Imposition; exceptions.

There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if—

(A) the taking proposed in the application for any such permit, or

(B) the importation proposed to be made,

is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter II of this chapter. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 1361 of this title. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) During the twenty-four calendar months initially following October 21, 1972, the taking of marine mammals incidental to the course of commercial fishing operations shall be permitted, and shall not be subject to the provisions of sections 1373 and 1374 of this title: *Provided*, That such taking conforms to such conditions and regulations as the Secretary is authorized and directed to impose pursuant to section 1381 of this title to insure that those techniques and equipment are used which will produce the least practicable hazard to marine mammals in such commercial fishing operations. Subsequent to such twenty-four months, marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued thereof pursuant to section 1374 of this title, subject to regulations prescribed by the Secretary in accordance with section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary shall request the Committee on Scientific Advisors on Marine Mammals to prepare for public dissemination detailed estimates of the numbers of mammals killed or seriously injured under existing commercial fishing technology and under the technology which shall be required subsequent to such twenty-four-month period. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. The Secretary shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory move-

ments of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 1372, 1373, 1374, and 1381 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such determinations must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter: *Provided further, however,* That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this chapter. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(b) Exemptions for Alaskan natives.

The provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes by Alaskan natives who reside in Alaska, or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: *Provided,* That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: *And provided further,* That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this chapter. Such regulations shall be prescribed after notice and hearing required by section 1373 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.

(c) Hardship exemption.

In order to minimize undue economic hardship to persons subject to this chapter, other than those engaged in commercial fishing operations referred to in subsection (a)(2) of this section, the Secretary, upon any such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may exempt such person or class of persons from provisions of this chapter for no more than one year from October 21, 1972, as he determines to be appropriate. (Pub. L. 92–522, title I, § 101, Oct. 21, 1972, 86 Stat. 1029, amended Pub. L. 93–205, § 13(e)(2), Dec. 28, 1973, 87 Stat. 903.)

AMENDMENTS

1973—Subsec. (a)(3)(B). Pub. L. 93–205 substituted "or threatened species pursuant to the Endangered Species Act of 1973" for "pursuant to the Endangered Species Conservation Act of 1969".

§ 1372. Prohibitions.

(a) Taking.

Except as provided in sections 1371, 1373, 1374, 1381, and 1383 of this title, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this subchapter or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this subchapter—

(A) to possess any such mammal; or

(B) to transport, sell, or offer for sale any such mammal or any marine mammal product made from any such mammal; and

(4) for any person to use, in a commercial fishery, any means or methods of fishing in contra-

vention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this chapter.

(b) Importation of pregnant or nursing mammals; depleted species or stock; inhumane taking.

Except pursuant to a permit for scientific research issued under section 1374(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973; or

(4) taken in a manner deemed inhumane by the Secretary.

(c) Importation of illegally taken mammals.

It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this subchapter; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has prescribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Nonapplicability of prohibitions.

Subsections (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted or endangered; or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) Retroactive effect.

This chapter shall not apply with respect to any marine mammal taken before the effective date of this Act, or to any marine mammal product consisting of, of composed in whole or in part of, any marine mammal taken before such date. (Pub. L. 92-522, title I, § 102, Oct. 21, 1972, 86 Stat. 1032, amended Pub. L. 93-205, § 13(e)(3), Dec. 28, 1973, 87 Stat. 903.)

AMENDMENTS

1973—Subsec. (b)(3). Pub. L. 93-205 substituted "an endangered species or threatened species pursuant to the Endangered Species Act of 1973" for "endangered under the Endangered Species Conservation Act of 1969".

§ 1373. Regulations on taking of marine mammals.

(a) Necessity and appropriateness.

The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 1361 of this title.

(b) Factors considered in prescribing regulations.

In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on—

(1) existing and future levels of marine mammal species and population stocks;

(2) existing international treaty and agreement obligations of the United States;

(3) the marine ecosystem and related environmental considerations;

(4) the conservation, development, and utilization of fishery resources; and

(5) the economic and technological feasibility of implementation.

(c) Allowable restrictions.

The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 1374 of this title;

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) Procedure.

Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to

section 1371(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe regulations under this section—

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) Periodic review.

Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this chapter.

(f) Report to Congress.

Within six months after the effective date of this Act and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this chapter. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this subchapter to assure the well-being of such marine mammals. (Pub. L. 92–522, title I, § 103, Oct. 21, 1972, 86 Stat. 1033.)

§ 1374. Permits.

(a) Issuance.

The Secretary may issue permits which authorize the taking or importation of any marine mammal.

(b) Requisite provisions.

Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 1373 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported.

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) Importation for display or research.

Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of display or scientific research shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to and after such taking or importation. Any person authorized to take or import a marine mammal for purposes of display or scientific research shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(d) Application procedures; notice; hearing; review.

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this chapter and the applicable regulations established under section 1373 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of busi-

ness, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) Modification, suspension, and revocation.

(1) The Secretary may modify, suspend, or revoke in whole or in part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 1373 of this title, or

(B) in any case in which a violation of the terms and conditions of the permit is found.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Possession of permit by issuee or his agent.

Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under a such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) Fees.

The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) General permits.

Consistent with the regulations prescribed pursuant to section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issued general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits. (Pub. L. 92–522, title I, § 104, Oct. 21, 1972, 86 Stat. 1034.)

§ 1375. Penalties.

(a) Any person who violates any provision of this subchapter or of any permit or regulation issued thereunder may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(b) Any person who knowingly violates any provision of this subchapter or of any permit or regulation issued thereunder shall, upon conviction, be fined not more than $20,000 for each such violation, or imprisoned for not more than one year, or both. (Pub. L. 92–522, title I, § 105, Oct. 21, 1972, 86 Stat. 1036.)

§ 1376. Seizure and forfeiture of cargo; penalties; reward for information leading to conviction.

(a) Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyance seized in connection with the unlawful taking of a marine mammal insofar as such provisions of law are applicable and not inconsistent with the provisions of this subchapter.

(b) Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than $25,000. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

(c) Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed $2,500 to any person who furnishes information which leads to a conviction for a violation of this subchapter. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section. (Pub. L. 92–522, title I, § 106, Oct. 21, 1972, 86 Stat. 1036.)

§ 1377. Enforcement.

(a) Utilization of personnel.

Except as otherwise provided in this subchapter, the Secretary shall enforce the provisions of this subchapter. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this subchapter.

(b) State officers and employees.

The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this subchapter. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(c) Warrants and other process for enforcement.

The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in United States district courts, as may be required for enforcement of this subchapter and any regulations issued thereunder.

(d) Execution of process; arrest; search; seizure.

Any person authorized by the Secretary to enforce this subchapter may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this subchapter. Such person so authorized may, in addition to any other authority conferred by law—

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this subchapter or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel or other conveyance subject to the jurisdiction of the United States or any person on board is in violation of any provision of this subchapter or the regulations issued thereunder, search such vessel or conveyance and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this subchapter or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammal products taken or retained in violation of this subchapter or the regulations issued thereunder and shall dispose of them in accordance with regulations prescribed by the Secretary.

(e) Disposition of seized cargo.

(1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 1375 (a) or (b) of this title. All marine mammal or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary.

(2) The Secretary may, with respect to any proceeding under section 1375 (a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

(3)(A) Upon the assessment of a penalty pursuant to section 1375(a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 1375 (b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the court, be forfeited to the United States or otherwise disposed of.

(4) If with respect to any marine mammal or marine mammal product or other cargo so seized—

(A) a civil penalty is assessed under section 1375(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 1375(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, with thirty days after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 1375(a) of this title.

(Pub. L. 92-522, title I, § 107, Oct. 21, 1972, 86 Stat. 1037.)

§ 1378. International program.

(a) The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this chapter;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by

the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals. The Secretary of State shall prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(3) encourage such other agreements to promote the purposes of this chapter with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this chapter;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after October 21, 1972, a full report on the results of his efforts under this section.

(b)(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 1401 of this title, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this chapter, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this chapter, or both, to make the Convention and this chapter consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after October 21, 1972, and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this chapter consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this chapter consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing. (Pub. L. 92–522, title I, § 108, Oct. 21, 1972, 86 Stat. 1038.)

§ 1379. Federal cooperation with States.

(a) State regulation of the taking of marine mammals.

(1) Except as otherwise provided in this section, no State may adopt any law or regulation relating to the taking of marine mammals within its jurisdiction or attempt to enforce any State law or regulation relating to such taking.

(2) Any State may adopt and enforce any laws or regulations relating to the protection and taking, within its jurisdiction, of any species or population stock of marine mammals if the Secretary determines, after review thereof, that such laws and regulations will be consistent with (A) the regulations promulgated under section 1373 of this title with respect to such species or population stock, and (B) such other provisions of this chapter, and any rule or regulation promulgated pursuant to this subchapter, which apply with respect to such species or population stock. If the Secretary determines that any such State laws and regulations are so consistent, the provisions of this chapter, except this section and sections 1371 (except to the extent that the Secretary waives the application of section 1371 to permit such State laws and regulations to take effect) and 1380 of this title, and subchapter II of this chapter, shall not apply with respect to the species or population stock concerned within the jurisdiction of the State.

(3) Notwithstanding the preceding provisions of this subsection and the provisions of subsection (c) of this section, the Secretary shall continuously monitor and review the laws and regulations of any State which has assumed responsibility for marine mammals as provided for in paragraph (2) of this subsection. Whenever the Secretary finds that the laws and regulations of any such State are not in substantial compliance with either paragraph (1) or (2), or both, he shall resume responsibilities under this chapter for the marine mammals concerned within the jurisdiction of that State, superseding such State laws and regulations to the extent which, after notice and opportunity for hearing, he deems necessary.

(4) Nothing in this chapter shall prevent a State or local government official or employee, in the course of his duties as an official or employee, from taking a marine mammal in a humane manner if such taking (A) is for the protection or welfare of such mammal or for the protection of the public health and welfare, and (B) includes steps designed

to insure the return of such mammal to its natural habitat.

(b) Grants to States.

The Secretary is authorized to make grants to each State whose laws and regulations relating to protection and management of marine mammals which primarily inhabit waters or lands within the boundaries of that State are found to be consistent with the purposes and policies of this chapter. The purpose of such grants shall be to assist such States in developing and implementing State programs for the protection and management of such marine mammals. Such grants shall not exceed 50 per centum of the costs of a particular program's development and implementation. To be eligible for such grants, State programs shall include planning and such specific activities, including, but not limited, to research, censusing, habitat acquisition and improvement, or law enforcement as the Secretary finds contribute to the purposes and policies of this chapter. The Secretary may also, as a condition of any such grant, provide that State agencies report at regular intervals on the status of species and populations which are the subject of such grants.

(c) Delegation of administration and enforcement to States.

The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this subchapter: *Provided*, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this chapter will be carried out. (Pub. L. 92–522, title I, § 109, Oct. 21, 1972, 86 Stat. 1040.)

§ 1380. Marine mammal research grants.

(a) The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals.

(b) Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c) There are authorized to be appropriated for the fiscal year in which this section takes effect and for the next four fiscal years thereafter such sums as may be necessary to carry out this section, but the sums appropriated for any such year shall not exceed $2,500,000, one-third of such sum to be available to the Secretary of the Interior and two-thirds of such sum to be made available to the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating. (Pub. L. 92–522, title I, § 110, Oct. 21, 1972, 86 Stat. 1041.)

§ 1381. Commercial fisheries gear development.

(a) Research and development program; report to Congress; authorization of appropriations.

The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this section as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. At the end of the full twenty-four calendar month period following October 21, 1972, the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of $1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal year. Funds appropriated for this section shall remain available until expended.

(b) Reduction of level of taking of marine mammals incidental to commercial fishing operations.

The Secretary, after consultation with the Marine Mammal Commission, is authorized and directed to issue, as soon as practicable, such regulations, covering the twenty-four-month period referred to in section 1371(a)(2) of this title, as he deems necessary or advisable, to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. Such regulations shall be adopted pursuant to section 553 of Title 5. In issuing such regulations, the Secretary shall take into account the results of any scientific research under subsection (a) of this section and, in each case, shall provide a reasonable time not exceeding four months for the persons affected to implement such regulations.

(c) Reduction of level of taking of marine mammals in tuna fishery.

Additionally, the Secretary and Secretary of State are directed to commence negotiations within the Inter-American Tropical Tuna Commission in order to effect essential compliance with the regulatory provisions of this chapter so as to reduce to the maximum extent feasible the incidental taking of marine mammals by vessels involved in the tuna fishery. The Secretary and Secretary of State are further directed to request the Director of Investigations of the Inter-American Tropical Tuna Commission to make recommendations to all member nations of the Commission as soon as is practicable as to the utilization of methods and gear devised under subsection (a) of this section.

(d) Research and observation.

Furthermore, after timely notice and during the

period of research provided in this section, duly authorized agents of the Secretary are hereby empowered to board and to accompany any commercial fishing vessel documented under the laws of the United States, there being space available, on a regular fishing trip for the purpose of conducting research or observing operations in regard to the development of improved fishing methods and gear as authorized by this section. Such research and observation shall be carried out in such manner as to minimize interference with fishing operations. The Secretary shall provide for the cost of quartering and maintaining such agents. No master, operator, or owner of such a vessel shall impair or in any way interfere with the research or observation being carried out by agents of the Secretary pursuant to this section. (Pub. L. 92–522, title I, § 111, Oct. 21, 1972, 86 Stat. 1041.)

§ 1382. Regulations and administration.

(a) The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subchapter.

(b) Each Federal agency is authorized and directed to cooperate with the Secretary, in such manner as may be mutually agreeable, in carrying out the purposes of this subchapter.

(c) The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this subchapter and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

(d) The Secretary shall review annually the operation of each program in which the United States participates involving the taking of marine mammals on lands. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of policies of this chapter, he shall suspend the operation of that program and shall forthwith submit to Congress his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem. (Pub. L. 92–522, title I, § 112, Oct. 21, 1972, 86 Stat. 1042.)

§ 1383. Application to other treaties and conventions.

The provisions of this subchapter shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this subchapter in order to effect essential compliance with the regulatory provisions of this chapter so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 1375 of this title may not apply to such persons. (Pub. L. 92–522, title I, § 113(a), Oct. 21, 1972, 86 Stat. 1042.)

§ 1384. Authorization of appropriations.

(a) There are authorized to be appropriated not to exceed $2,000,000 for the fiscal year ending June 30, 1973, and the four next following fiscal years to enable the department in which the National Oceanic and Atmospheric Administration is operating to carry out such functions and responsibilities as it may have been given under this subchapter.

(b) There are authorized to be appropriated not to exceed $700,000 for the fiscal year ending June 30, 1973, and not to exceed $525,000 for each of the next four fiscal years thereafter to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this subchapter. (Pub. L. 92–522, title I, § 114, Oct. 21, 1972, 86 Stat. 1043.)

SUBCHAPTER II.—MARINE MAMMAL COMMISSION

§ 1401. Establishment; membership; term; Chairman; compensation; Executive Director.

(a) There is hereby established the Marine Mammal Commission (hereafter referred to in this subchapter as the "Commission").

(b)(1) The Commission shall be composed of three members who shall be appointed by the President. The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) The President shall designate a Chairman of the Commission (hereafter referred to in this subchapter as the "Chairman") from among its members.

(d) Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of Title 5, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of Title 5 governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS–18 of the General Schedule under section 5332 of Title 5. The Executive Director shall have such duties as the Chairman may assign. (Pub. L. 92–522, title II, § 201, Oct. 21, 1972, 86 Stat. 1043.)

§ 1402. Duties; reports and recommendations; public information; explanation of non-adoption of recommendations.

(a) The Commission shall—

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949, the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966;

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this chapter, and of all applications for permits for scientific research;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this chapter, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this chapter.

(b) The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall furnish its reports and recommendations to him, before publication, for his comment.

(c) The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of Title 5.

(d) Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted. (Pub. L. 92–522, title II, § 202, Oct. 21, 1972, 86 Stat. 1044, amended Pub. L. 93–205, § 13(e)(4), Dec. 28, 1973, 87 Stat. 903.)

AMENDMENTS

1973—Subsec. (a)(6). Pub. L. 93–205 substituted "such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title" for "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,".

§ 1403. Committee of Scientific Advisors on Marine Mammals.

(a) The Commission shall establish, within ninety days after its establishment, a Committee of Scientific Advisors on Marine Mammals (hereafter referred to in this subchapter as the "Committee"). Such Committee shall consist of nine scientists knowledgeable in marine ecology and marine mammal affairs appointed by the Chairman after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences.

(b) Except for United States Government employees, members of the Committee shall each be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of Title 5, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in Government service employed intermittently.

(c) The Commission shall consult with the Com-

mittee on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of this chapter, and on all applications for permits for scientific research. Any recommendations made by the Committee or any of its members which are not adopted by the Commission shall be transmitted by the Commission to the appropriate Federal agency and to the appropriate committees of Congress with a detailed explanation of the Commission's reasons for not accepting such recommendations. (Pub. L. 92–522, title II, § 203, Oct. 21, 1972, 86 Stat. 1044.)

§ 1404. Reports.

The Commission shall transmit to Congress, by January 31 of each year, a report which shall include—

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 1402 of this title together with the responses made to these recommendations.

(Pub. L. 92–522, title II, § 204, Oct. 21, 1972, 86 Stat. 1045.)

§ 1405. Coordination with other Federal agencies.

The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this chapter. (Pub. L. 92–522, title II, § 205, Oct. 21, 1972, 86 Stat. 1045.)

§ 1406. Administration.

The Commission, in carrying out its responsibilities under this subchapter, may—

(1) employ and fix the compensation of such personnel;

(2) acquire, furnish, and equip such office space;

(3) enter into such contracts or agreements with other organizations, both public and private;

(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of Title 5 (but at rates for individuals not to exceed $100 per diem); and

(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this subchapter. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services. (Pub. L. 92–522, title II, § 206, Oct. 21, 1972, 86 Stat. 1045.)

§ 1407. Authorization of appropriations.

There are authorized to be appropriated for the fiscal year in which this subchapter is enacted and for the next four fiscal years thereafter such sums as may be necessary to carry out this subchapter, but the sums appropriated for any such year shall not exceed $1,000,000. Not less than two-thirds of the total amount of the sums appropriated pursuant to this section for any such year shall be expended on research and studies conducted under the authority of section 1402(a)(2) and (3) of this title. (Pub. L. 92–522, title II, § 207, Oct. 21, 1972, 86 Stat. 1046.)

24. Marine Resources and Engineering Development Act

33 U.S.C. 1101–1108

(See Marine Resources and Engineering Development Act of 1966 under title VIII *Oceanography*)

25. National Fisheries Center and Aquarium

16 U.S.C. 1051–1058

Sec.

§ 1051. Authorization to plan, construct, and maintain Center and Aquarium; use of Federal land and property; acquisition of lands, waters, and interest therein.

(a) The Administrator of General Services (hereinafter referred to as the "Administrator") is authorized to plan, construct, and maintain a National Fisheries Center and Aquarium in the District of Columbia or its vicinity for research in fisheries and for the display of fresh water and marine fishes and other aquatic resources for educational, recreational, cultural, and scientific purposes.

(b) The Administrator is further authorized to use Federal land and property for purposes of this chapter with the consent of the particular agency having administrative jurisdiction thereover, and, if said property is unavailable for purposes hereof, he may purchase, lease, or otherwise acquire such lands, waters, and interests therein, as he may deem necessary to carry out the provisions of subsection (a) of this section. (Pub. L. 87–758, § 1, Oct. 9, 1962, 76 Stat. 752.)

§ 1052. Operation of Center and Aquarium; specimens and exhibits; catalogs and other printed matter and films, animations and photographic and other material; employment of experts, consultants, and organizations; use of auditorium and other areas; use of facilities by foreigners.

(a) The Secretary of the Interior (hereinafter referred to as the "Secretary") shall operate the National Fisheries Center and Aquarium.

(b) The Secretary is further authorized to—

(1) construct, purchase or lease, and operate and maintain vessels for specimen collecting purposes and, without regard to section 5 of Title 41, to contract for such collection of specimens and to purchase or exchange specimens and exhibit materials;

(2) prepare for free distribution or exhibit or to offer for sale at cost illustrated catalogs of specimens, brochures, and other printed matter and films, animations and photographic and other material pertaining to the National Fisheries Center and Aquarium and its objectives and to aquariums generally, all or any of which may be reproduced by any printing or other process without regard to existing regulations, the proceeds of sales to be covered into the United States Treasury;

(3) employ, as authorized by section 55a of Title 5, but at rates not to exceed $50 per diem plus expenses, experts, consultants, or organizations thereof, as required to assist with the planning, design, construction, and operation of the National Fisheries Center and Aquarium;

(4) permit on such terms and conditions as he shall consider to be in the public interest the use of auditorium and other areas for meetings and exhibits of societies and groups whose purposes are related to fish and wildlife generally; and

(5) encourage the use of the educational and scientific facilities and equipment at the National Fisheries Center and Aquarium by individuals of any nation with which the United States maintains diplomatic relations and which extends similar use of its educational and scientific facilities and equipment to citizens of the United States. (Pub. L. 87–758, § 2, Oct. 9, 1962, 76 Stat. 752.)

§ 1053. Delegation of responsibility for operation.

The Secretary shall assign the responsibility for the operation of the National Fisheries Center and Aquarium and related activities to that branch of the Bureau of Sport Fisheries and Wildlife having as its major activity the rearing and holding of living fishes, including the operation of aquariums. (Pub. L. 87–758, § 3, Oct. 9, 1962, 76 Stat. 753.)

§ 1054. Advisory Board; establishment; meetings; functions; quorum; executive secretary.

There is established a nonpartisan Advisory Board to be known as the National Fisheries Center and Aquarium Advisory Board. The Advisory Board shall meet from time to time on the call of the Chairman. The functions of the Board shall be to render advice and to submit recommendations to the Secretary of the Interior upon his request, or upon its own initiative, concerning the management and operation of the National Fisheries Center and Aquarium. Five members shall constitute a quorum to transact business. The Secretary may designate an employee of the Department to serve as Executive Secretary to the Board. (Pub. L. 87–758, § 4, Oct. 9, 1962, 76 Stat. 753.)

§ 1055. Members of Advisory Board; appointment; term; vacancies.

(a) The Advisory Board shall be composed of nine members. The Secretary shall designate the Chairman of the Advisory Board. The Assistant Secretary of the Interior for Fish and Wildlife shall be a member of such Board ex officio. The remaining eight members of such Board shall be appointed as follows—

(1) two Members of the Senate, appointed by the President of the Senate;

(2) two Members of the House of Representatives, appointed by the Speaker of the House of Representatives;

(3) two individuals appointed by the Secretary, one of whom shall be engaged in or closely associated with, sport fishing, and one of whom shall be engaged in, or closely associated with, commercial fishing; and

(4) two individuals appointed by the Secretary from the public at large.

(b) Each class of two members of the Advisory Board referred to in subsection (a) of this section shall be appointed for terms of four years, except

that, of each such class of two members initially appointed, one shall be appointed for a term of two years. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Of each class of two members of such Board referred to in paragraphs (1) and (2) of subsection (a) of this section, not more than one shall be from the same political party, and not more than one shall be from the same State. Any member of such Board referred to in such paragraphs (1) and (2) who shall cease to be a Member of Congress during the term of his appointment under this section shall cease to be a member of such Board.

(c) Any vacancy in the Advisory Board shall be filled in the same manner as in the case of the original appointment. (Pub. L. 87–758, § 5, Oct. 9, 1962, 76 Stat. 753.)

§ 1056. Compensation of Advisory Board.

Members of the Advisory Board, other than members appointed under paragraphs (3) and (4) of subsection (a) of section 1055 of this title, shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Board. Members of the Board appointed under paragraphs (3) and (4) of subsection (a) of section 1055 of this title may each receive $50 per diem when engaged in the actual performance of duties vested in the Board, in addition to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties. (Pub. L. 87–758, § 6, Oct. 9, 1962, 76 Stat. 754.)

§ 1057. Preparation of annual report by Director.

The Director of the National Fisheries Center and Aquarium shall prepare for the Advisory Board an annual report for presentation to the Secretary of the Interior and to the Congress. (Pub. L. 87–758, § 7, Oct. 9, 1962, 76 Stat. 754.)

§ 1058. Limitation on appropriations and expenditures; charges for visitation and use.

Funds appropriated and expended hereunder for construction of the buildings for the National Fisheries Center and Aquarium shall not exceed $10,000,000: *Provided*, That the expenditure of such funds shall be made subject to the condition that the Secretary of the Interior shall establish charges relating to visitation to and uses of the National Fisheries Center and Aquarium at such rates as in the Secretary's judgment will produce revenues to (a) liquidate the costs of construction within a period of not to exceed thirty years and (b) pay for the annual operation and maintenance costs thereof. (Pub. L. 87–758, § 8, Oct. 9, 1962, 76 Stat. 754.)

26. North Pacific Fisheries Act

16 U.S.C. 1021–1032

Sec.

§ 1021. Definitions.

As used in this chapter, the term—

(a) "Convention" means the International Convention for the High Seas Fisheries of the North Pacific Ocean with a protocol relating thereto signed at Tokyo, May 9, 1952;

(b) "Commission" means the International North Pacific Fisheries Commission provided for by article II of the Convention;

(c) "United States Section" means the United States Commissioners to the Commission;

(d) "Convention area" means all waters, other than territorial waters, of the North Pacific Ocean which for the purposes of this chapter shall include the adjacent seas;

(e) "Fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities. (Aug. 12, 1954, ch. 669, § 2, 68 Stat. 698.)

§ 1022. United States Commissioners.

(a) Appointment; number; term and compensation.

The United States shall be represented on the Commission by not more than four United States Commissioners to be appointed by the President and to serve at his pleasure; except that after January 1, 1973, (1) each United States Commissioner shall be appointed for a term of office of not to exceed four years, but is eligible for reappointment; and (2) any United States Commissioner may be appointed for a lesser term if necessary to insure that the term of office of not more than one Commissioner will expire

in any one year. Of such Commissioners, who shall receive no compensation for their services as Commissioners, one shall be an official of the United States Government, and each of the others shall be a person residing in a State, the residents of which maintain a substantial fishery in the Convention area.

(b) Alternate United States Commissioners; appointment; powers and duties.

The Secretary of State, in consultation with the Secretary of Commerce, may designate from time to time Alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission or of the United States Section or of the Advisory Committee established pursuant to section 1023 of this title, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present. (As amended Oct. 9, 1972, Pub. L. 92–471, title I, § 108(a), 86 Stat. 786.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–471 designated existing provisions as subsec. (a), and in subsec. (a), as so redesignated, added provision that after January 1, 1973, each United States Commissioner shall be appointed for four years with eligibility for reappointment, and for shorter period under special circumstances.

Subsec. (b). Pub. L. 92–471 added subsec. (b).

§ 1023. Advisory Committee; appointment and number of members; terms; sessions; meetings; compensation.

(a) The United States Section shall appoint an advisory committee composed of not less than five nor more than twenty members and shall fix the terms of office thereof, such members to be selected both from the various groups participating in the fisheries covered by the Convention and from the fishery agencies of the States or Territories, the residents of which maintain a substantial fishery in the Convention area.

(b) Any or all members of the advisory committee may attend all sessions of the Commission except executive sessions.

(c) The advisory committee shall be invited to all nonexecutive meetings of the United States Section and at such meetings shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section.

(d) The members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Section, not more than three members of the committee, designated by the Committee, shall be paid for transportation expenses and per diem incident to attendance at meetings of the Commission or of the United States Section. (As amended Oct. 9, 1972, Pub. L. 92–471, title I, § 108(b), 86 Stat. 787.)

AMENDMENTS

1972—Subsec. (d). Pub. L. 92–471 substituted "shall be paid" for "may be paid."

§ 1024. Repealed. Pub. L. 92–471, title I, § 108(c), Oct. 9, 1972, 86 Stat. 787.

Section, act Aug. 12, 1954, ch. 669, § 5, 68 Stat. 698, provided that service of individuals appointed as United States Commissioners shall not be treated as service for the purposes of certain sections of Title 18, Crimes and Criminal Procedure and Title 5, Government Organization and Employees.

§ 1025. Powers of President; acceptance or rejection of Commission's recommendations; selection of special committee.

The President is authorized to (a) accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with the provisions of article III, section 1, of the Convention, and recommendations made by the Commission in pursuance of the provisions of the Protocol to the Convention; and (b) act for the United States in the selection of persons by the contracting parties to compose the special committee provided by the Protocol to the Convention. (Aug. 12, 1954, ch. 669, § 6, 68 Stat. 699.)

§ 1025a. Administration of Convention and chapter; cooperation with other signatories to the Convention; regulations; area applicable.

The Secretary of Commerce is authorized and directed to administer and enforce all the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions he is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and, with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. He shall adopt such regulations on consultation with the United States Section and they shall apply only to stocks of fish in the Convention area north of the parallel of north latitude of 48 degrees and 30 minutes. No such reguations shall apply in the Convention area south of the 49th parallel of north latitude with respect to sockeye salmon (Oncorhynchus nerka) or pink salmon (Oncorhynchus gorbuscha). (Aug. 12, 1954, ch. 699, § 7, as added Oct. 9, 1972, Pub. L. 92–471, title I, § 101, 86 Stat. 784.)

§ 1026. Cooperation with other agencies.

Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the

Commission. (Aug. 12, 1954, ch. 669, § 7, 68 Stat. 699.)

Section 7 of act Aug. 12, 1954, ch. 669, 68 Stat. 699, renumbered section 8 by Pub. L. 92–471, title I, § 101, Oct. 9, 1972, 86 Stat. 784.

§ 1027. Enforcement.

(a) Responsibility of Secretary of the Department in which the Coast Guard is operating; regulations for procedures and methods of enforcement.

Enforcement activities under the provisions of this chapter relating to vessels engaged in fishing and subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the Department in which the Coast Guard is operating, in cooperation with the Secretary of Commerce. The Secretary of the Department in which the Coast Guard is operating, with the concurrence of the Secretary of Commerce and the Secretary of State, is authorized to adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to articles 9 and 10 of the Convention.

(b) Abstention from fishing in certain areas.

The provisions of the Convention and this chapter relating to abstention from fishing in certain areas by the nationals and vessels of one or more of the contracting parties shall be enforced by the Secretary of the Department in which the Coast Guard is operating, in cooperation with the Secretary of Commerce and the Secretary of the Treasury.

(c) Boarding and inspecting vessels of Canada or Japan.

For such purposes any Coast Guard officer, any officer of the Department of Commerce, or any other person authorized to enforce the provisions of the Convention and this chapter referred to in subsection (b) of this section may go on board any fishing vessel of Canada or Japan found in waters in which Canada or Japan has agreed by or under the Convention to abstain from exploitation of one or more stocks of fish, and, when he has reasonable cause to believe that such vessel is engaging in operations in violation of the provisions of the Convention, may, without warrant or other process, inspect the equipment, books, documents, and other articles on such vessel and question the persons on board, and for these purposes may hail and stop such vessel, and use all necessary force to compel compliance.

(d) Detention and delivery of vessels suspected of violation.

Whenever any such officer has reasonable cause to believe that any person on any fishing vessel of Canada or Japan is violating, or immediately prior to the boarding of such vessel was violating, the provisions of the Convention referred to in subsection (b) of this section, such person, and any such vessel employed in such violation shall be detained and shall be delivered as promptly as practicable to an authorized official of the nation to which they belong in accordance with the provisions of the Convention.

(e) Enforcement officers as witnesses.

Any officer of the Coast Guard, any officer of the Department of Commerce, or any other person authorized to enforce the provisions of the Convention and this chapter referred to in subsection (b) of this section, may be directed to attend as witnesses and to produce such available records and files or duly certified copies thereof as may be necessary to the prosecution in Canada or Japan of any violation of the provisions of the Convention or any Canadian or Japanese law for the enforcement thereof when requested by the appropriate authorities of Canada or Japan respectively.

(f) Designation of enforcement officers.

The Secretary of Commerce may designate officers of the States and Territories of the United States to enforce the provisions of the Convention and this chapter insofar as they pertain to fishing vessels of the United States and the persons on board such vessels. (Aug. 12, 1954, ch. 669, § 9, formerly § 8, 68 Stat. 699, renumbered and amended Oct. 9, 1972, Pub. L. 92–471, title I, §§ 102, 103, 107, 86 Stat. 784, 786.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–471, § 102(4), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 92–471, §§ 102(2), 107(a), redesignated former subsec. (a) as subsec. (b), and in subsec. (b) as so redesignated, substituted provisions vesting enforcement authority in the Secretary of the Department in which the Coast Guard is operating, in cooperation with the Secretary of Commerce and the Secretary of the Treasury, for provisions vesting such authority in the Coast Guard in cooperation with the Fish and Wildlife Service and the Bureau of Customs. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 92–471, §§ 102(2), (3), 107(b), redesignated former subsec. (b) as subsec. (c), and in subsec. (c) as so redesignated, substituted "subsection (b)" for "subsection (a)" and "Department of Commerce" for "Fish and Wildlife Service". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 92–471, §§ 102(2), (3), redesignated former subsec. (c) as subsec. (d), and in subsec. (d) as so redesignated, substituted "subsection (b)" for "subsection (a)". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–471, §§ 102(2), (3), 107(b), redesignated former subsec. (d) as subsec. (e), and in subsec. (e) as so redesignated, substituted "subsection (b)" for "subsection (a)" and "Department of Commerce" for "Fish and Wildlife Service".

Subsec. (f). Pub. L. 92–471, §§ 103, 107(c), designated former section 9 of the North Pacific Fisheries Act of 1954, which was classified to section 1028 of this title, as subsec. (f), and in subsec. (f) as so redesignated, substituted "Secretary of Commerce" for "Secretary of the Interior".

§ 1028. Designation of enforcement officers.

The Secretary of the Interior may designate officers of the States and Territories of the United States to enforce the provisions of the Convention and this chapter insofar as they pertain to fishing vessels of the United States and the persons on board such vessels. (Aug. 12, 1954, ch. 669, § 9, 68 Stat. 699.)

§ 1029. Unlawful activities.

(a) Fishing and related transactions in violation of regulations and court orders.

It shall be unlawful for any person subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to this chapter or of any order of a court issued pur-

suant to section 1030 of this title; to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of any such regulation or order; to fail to make, keep, submit, or furnish any record or report required of him by such regulation, or refuse to permit any officer authorized to enforce such regulations to inspect such record or report at any reasonable time.

(b) Abstention by the United States from fishing in certain waters.

It shall be unlawful for any person or fishing vessel subject to the jurisdiction of the United States to engage in the catching of any stock of fish from which the United States may agree to abstain in the waters specified for such abstention as set forth in the Annex to the Convention, or to load, process, possess, or transport any fish or fish products processed therefrom in the said waters, or to land in a port of the United States any fish so caught, loaded, possessed, or transported or any fish products processed therefrom.

(c) Transacting in fish from waters abstained to by the United States.

It shall be unlawful for any person or fishing vessel subject to the jurisdiction of the United States knowingly to load, process, possess, or transport any fish specified in subsection (b) of this section or any fish products processed therefrom in the territorial waters of the United States or in any waters of the Convention area in addition to those specified in subsection (b) of this section, or to land in a port of the United States any such fish or fish products.

(d) Transacting in fish from waters abstained to by Canada and Japan.

It shall be unlawful for any person or fishing vessel subject to the jurisdiction of the United States knowingly to load, process, possess, or transport in the Convention area or in the territorial waters of the United States any fish taken by a national of Canada or Japan from a stock of fish from which Canada or Japan respectively has agreed to abstain as set forth in the Annex to the Convention or any fish products processed therefrom, or to land such fish or fish products in a port of the United States.

(e) Aiding and abetting in the taking of fish from waters abstained to by Canada and Japan.

It shall be unlawful for any person subject to the jurisdiction of the United States to aid or abet in the taking of fish by a national or fishing vessel of Canada or of Japan from a stock of fish from which Canada or Japan has respectively agreed to abstain as set forth in the Annex of the Convention.

(f) Refusal to permit boarding and inspection of vessels.

It shall be unlawful for the master or owner or any person in charge of any fishing vessel of the United States to refuse to permit the duly authorized officials of the United States, Canada, or Japan to board such vessel or inspect its equipment, books, documents, or other articles or question the persons on board in accordance with the provision of the Convention, or to obstruct such officials in the execution of such duties.

(g) Commission or omission of acts prohibited or required by regulations.

It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to do any act prohibited or fail to do any act required by any regulation adopted pursuant to this chapter. (As amended Oct. 9, 1972, Pub. L. 92–471, title I, § 104, 86 Stat. 784.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–471, § 104(3), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 92–471, § 104(1) redesignated former subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 92–471, §§ 104(1), (2), redesignated former subsec. (b) as (c), and in subsec. (c) as so redesignated, substituted reference to subsec. (b) for (a) in two places. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 92–471, § 104(1), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–471, § 104(1), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 92–471, § 104(1) redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 92–471, § 104(4) added subsec. (g).

§ 1030. Penalties.

(a) Any person violating subsections (b), (c) or (d) of section 1029 of this title shall upon conviction be fined not more than $10,000, and for such offense the court may order forfeited, in whole or in part, the fish concerned in the offense, or the fishing gear involved in such fishing, or both, or the monetary value thereof. Such forfeited fish or fishing gear shall be disposed of in accordance with the direction of the court.

(b) Any person violating subsection (e) of section 1029 of this title shall upon conviction be fined not more than $10,000.

(c) Any person violating subsection (f) of section 1029 of this title shall upon conviction be fined not more than $10,000 and be imprisoned for not more than one year or both, and for such offense the court may order forfeited, in whole or in part the fish and fishing gear on board the vessel, or both, or the monetary value thereof. Such fish and fishing gear shall be disposed of in accordance with the direction of the court.

(d) Any person violating any other provision of this chapter or any regulation adopted pursuant to this chapter, upon conviction, shall be fined for a first offense not more than $500 and for a subsequent offense committed within five years not more than $1,000 and for such subsequent offense the court may order forfeited, in whole or in part, the fish taken by such person, or the fishing gear involved in such fishing, or both, or the monetary value thereof. Such forfeited fish or fishing gear shall be disposed of in accordance with the direction of the court. (As amended Oct. 9, 1972, Pub. L. 92–471, title I, § 105, 86 Stat. 785.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–471, § 105(1), substituted reference to subsections (b), (c), (d) for (a), (b), (c).

Subsec. (b). Pub. L. 92–471, § 105(2) substituted reference to subsec. (e) for (d).

Subsec. (c). Pub. L. 92–471, § 105(3) substituted reference to subsec. (f) for (e).

Subsec. (d). Pub. L. 92–471, § 105(4), substituted penalties for other offenses for provisions making section 989 of this title inapplicable to violations covered by this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1029 of this title.

§ 1031. Power and authority of enforcement officers.

(a) Arrest, search, seizure and disposal of property.

Any duly authorized enforcement officer or employee of the Department of Commerce; any Coast Guard officer; any United States marshal or deputy United States marshal; any customs officer; and any other person authorized to enforce the provisions of the Convention, this chapter, and the regulations issued pursuant thereto, shall have power without warrant or other process to arrest any person subject to the jurisdiction of the United States committing in his presence or view a violation of the Convention or of this chapter, or of the regulations issued pursuant thereto, and to take such person immediately for examination before a justice or judge or any other official designated in section 3041 of Title 18; and shall have power, without warrant or other process, to search any vessel subject to the jurisdiction of the United States when he has reasonable cause to believe that such vessel is engaging in fishing in violation of the provisions of the Convention or this chapter, or the regulations issued pursuant thereto. Any person authorized to enforce the provisions of the Convention, this chapter, or the regulations issued pursuant thereto, shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this chapter, and shall have power with a search warrant to search any vessel, vehicle, person, or place at any time. The judges of the United States district courts and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Any person authorized to enforce the provisions of the Convention, this chapter, or the regulations issued pursuant thereto may, except in the case of a first offense, seize, whenever and wherever lawfully found, all fish taken or retained, and all fishing gear involved in fishing, contrary to the provisions of the Convention or this chapter or to regulations issued pursuant thereto. Any property so seized shall not be disposed of except pursuant to the order of a court of competent jurisdiction or the provisions of subsection (b) of this section, or, if perishable, in the manner prescribed by regulations of the Secretary of Commerce.

(b) Stay of execution of process; bonds and stipulations.

Notwithstanding the provisions of section 2464 of Title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation for double the value of the property with sufficient sureties to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the property seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. (As amended Oct. 9, 1972, Pub. L. 92–471, title I, § 106, 86 Stat. 785.)

AMENDMENTS

1972—Pub. L. 92–471 substituted provisions of subsecs. (a) and (b) relating to the authority to arrest without warrant persons committing violations of the Convention, this chapter, or regulations issued pursuant thereto, search vessels suspected of fishing in violation of the Convention, this chapter, or regulations issued pursuant thereto, issue and execution of warrants, seizure of fish and fishgear and disposal thereof, stay of execution of process on receipt of bonds or stipulations, for paragraph incorporating by reference of sections 986(a) and (b), 988, 989, and 990 of this title with exception that regulations under section 986(a) be adopted by the Secretary of the Interior in consultation with the United States Section and that the regulations do not apply to certain areas.

§ 1032. Appropriations; use of funds.

(a) There is authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this chapter, including—

(1) necessary travel expenses of the United States Commissioners or Alternate Commissioners without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, or section 73b of Title 5; and

(2) the United States share of the joint expenses of the Commission; provided that the Commissioners shall not, with respect to commitments concerning the United States share of the joint expenses of the Commission, be subject to the provisions of section 262 (b) [1] of Title 22 insofar as they limit the authority of United States representatives to international organizations with respect to such commitments.

(b) Such funds as shall be made available to the Secretary of Commerce for research and related activities shall be expended to carry out the program of the Commission in accordance with recommendations of the United States Section. (As amended Oct. 9, 1972, Pub. L. 92–471, title I, §§ 107 (c), 108(d), 86 Stat. 786, 787.)

AMENDMENTS

1972—Subsec. (a)(1). Pub. L. 92–471, § 108(d), substituted "United States Commissioners or Alternate Commissioners" for "United States Commissioners".

Subsec. (b). Pub. L. 92–471, § 107(c), substituted "Secretary of Commerce" for "Secretary of the Interior".

REFERENCES IN TEXT

The Travel Expense Act of 1949, referred to in the text, is now covered by section 2105 and section 5701 et seq. of Title 5, Government Organization and Employees.

Section 73b of title 5, referred to in subsec. (a)(1), is now covered by section 5731 of Title 5, Government Organization and Employees.

[1] So in original. Probably should be section 262b of Title 22.

27. North Pacific Fur Seals

16 U.S.C. 1151–1159

(See Fur Seal Act of 1966 under this title)

28. Northern Pacific Halibut Act

16 U.S.C. 772–772j

Sec.

§ 772. Short title.

Sections 772 to 772i of this title may be cited as the "Northern Pacific Halibut Act of 1937." (June 28, 1937, ch. 392, § 1, 50 Stat. 325.)

§ 772a. Definitions.

When used in sections 772 to 772i of this title—

(a) Convention: The word "Convention" means the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa on the 2d day of March 1953 and any other treaty or convention which modifies or replaces that Convention, and shall include the regulations promulgated thereunder.

(b) Commission: The word "Commission" means the Commission provided for in the Convention

(c) Person: The word "person" includes partnerships, associations, and corporations.

(d) Territorial waters of the United States: The term "Territorial waters of the United States" means the Territorial waters contiguous to the western coast of the United States and the territorial waters contiguous to the southern and western coasts of Alaska.

(e) Territorial waters of Canada: The term "territorial waters of Canada" means the territorial waters contiguous to the western coast of Canada.

(f) Convention waters: The term "Convention waters" means the territorial waters of the United States, the territorial waters of Canada, and the high seas of the Northern Pacific Ocean and the Bering Sea, extending westerly from the limits of the territorial waters of the United States and of Canada.

(g) Halibut: The word "halibut" means the species of Hippoglossus inhabiting Convention waters.

(h) Vessel: The word "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water. (June 28, 1937, ch. 392, § 2, 50 Stat. 325; Aug. 8, 1953, ch. 382, 67 Stat. 494.)

AMENDMENTS

1953—Subsec. (a). Act Aug. 8, 1953, substituted "2d day of * * * replaces that Convention" for "29th day of January 1937" and deleted "of the International Fisheries Commission" preceding "promulgated".

Subsec. (b). Act Aug. 8, 1953, substituted "Commission provided for in the Convention" for "International Fisheries Commission provided for by article III of the Convention".

§ 772b. Acts unlawful.

It shall be unlawful for—

(a) any person other than a national or inhabitant of the United States to catch or attempt to catch any halibut in the territorial waters of the United States;

(b) any person to transfer to or to receive upon any vessel of the United States, or to bring to any place within the jurisdiction of the United States any halibut caught in Convention waters by the use of any vessel of a nation not a party to the Convention, or caught in Convention waters by any national or inhabitant of the United States or Canada in violation of the Convention or of sections 772 to 772i of this title;

(c) any national or inhabitant of the United States to catch, attempt to catch, or to possess any halibut in the territorial waters of the United States or in Convention waters in violation of any provision of the Convention or of sections 772 to 772i of this title;

(d) any person within the territory or jurisdiction of the United States to furnish, prepare, outfit, or provision any vessel, other than a vessel of the United States or Canada, in connection with any voyage during which such vessel is intended to be, is being, or has been employed in catching, attempting to catch, or possessing any halibut in Convention waters or the territorial waters of the United States or Canada;

(e) any person within the territory or jurisdiction of the United States to furnish, prepare, outfit, or provision any vessel of the United States or Canada in connection with any voyage during which such vessel is intended to be, is being, or has been employed in catching, attempting to catch, or possessing any halibut in violation of any provision of the Convention or of sections 772 to 772i of this title;

(f) any person within the territory or jurisdiction of the United States or any national or inhabitant of the United States within Convention waters knowingly to have or have had in his possession any halibut taken, transferred, received, or brought in in

violation of any provision of the Convention or of sections 772 to 772i of this title;

(g) any person to depart from any place within the jurisdiction of the United States in any vessel which departs from such place in violation of the Convention or of sections 772 to 772i of this title;

(h) any person in the territorial waters of the United States or any national or inhabitant of the United States in Convention waters to catch or attempt to catch any halibut, or to possess any halibut caught incidentally to fishing for other species of fish by the use of or in any vessel required by the Convention to have on board any license or permit unless such vessel shall have on board a license or permit which shall comply with all applicable requirements of the Convention, and which shall be available for inspection at any time by any officer authorized to enforce the Convention or by any representative of the Commission;

(i) any person to take, retain, land, or possess any halibut caught incidentally to fishing for other species of fish, in violation of any provision of the Convention or of sections 772 to 772i of this title. (June 28, 1937, ch. 392, § 3, 50 Stat. 326.)

§ 772c. Records and reports of master or owner.

It shall be unlawful for the master or owner or person in charge of any vessel or any other person required by the Convention to make, keep, or furnish any record or report, to fail to do so, or to refuse to permit any officer authorized to enforce the Convention or any representative of the Commission to examine and inspect any such record or report at any time. (June 28, 1937, ch. 392, § 4, 50 Stat. 327.)

§ 772d. Enforcement; arrest and seizure; detention; testimony of officers.

(a) The provisions of the Convention and of sections 772 to 772i of this title and any regulations issued under said sections shall be enforced by the Coast Guard, the Customs Service, and the Fish and Wildlife Service. For such purposes any officer of the Coast Guard, Customs, or Fish and Wildlife Service may at any time go on board of any vessel in territorial waters of the United States, or any vessel of the United States or Canada in Convention waters, except in the territorial waters of Canada, to address inquiries to those on board and to examine, inspect, and search the vessel and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel, and use all necessary force to compel compliance.

(b) Whenever it appears to any such officer that any person, other than a national or inhabitant of Canada, on any vessel of the United States is violating or has violated any provision of the Convention or of sections 772 to 772i of this title, he shall arrest such person and seize any such vessel employed in such violation. If any such person on any such vessel of the United States is a national or inhabitant of Canada, such person shall be detained and shall be delivered as soon as practicable to an authorized officer of Canada at the Canadian port or place nearest to the place of detention or at such other port or place as such officers of the United States and of Canada may agree upon.

(c) Whenever it appears to any such officer of the United States that any person, other than a national or inhabitant of the United States, on any vessel of Canada in Convention waters, except in the territorial waters of Canada, is violating or has violated any provision of the Convention, such person, and any such vessel employed in such violation, shall be detained and such person and such vessel shall be delivered as soon as practicable to an authorized officer of Canada at the Canadian port or place nearest to the place of detention, or at such other port or place as such officers of the United States and of Canada may agree upon. If any such person on any such vessel of Canada is a national or inhabitant of the United States, such person shall be arrested as provided for in subsection (b) of this section.

(d) Officers or employees of the Coast Guard, Customs, and Fish and Wildlife Service may be directed to attend as witnesses and to produce such available records and files or certified copies thereof as may be produced compatibly with the public interest and as may be considered essential to the prosecution in Canada of any violation of the provisions of the Convention or any Canadian law for the enforcement thereof when requested by the appropriate Canadian authorities in the manner prescribed in article V of the Convention to suppress smuggling concluded between the United States and Canada on June 6, 1924 (44 Stat. (pt. 3), 2097). (June 28, 1937, ch. 392, § 5, 50 Stat. 327; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232.)

§ 772e. Penalties and forfeitures.

(a) Any person violating any provision of section 772b of this title upon conviction shall be fined not more than $1,000 nor less than $100 or be imprisoned for not more than one year, or both.

(b) The cargo of halibut of every vessel employed in any manner in connection with the violation of any provision of section 772b of this title shall be forfeited; upon a second violation of the provisions of said section, every such vessel, including its tackle, apparel, furniture, and stores may be forfeited and the cargo of halibut of every such vessel shall be forfeited; and, upon a third or subsequent violation of the provisions of said section, every such vessel, including its tackle, apparel, furniture, cargo, and stores shall be forfeited.

(c) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of sections 772 to 772i of this title, insofar as such pro-

visions of law are applicable and not inconsistent with the provisions of said sections: *Provided*, That except as provided in section 772d of this title all rights, powers, and duties conferred or imposed by said sections upon any officer or employee of the Treasury Department shall, for the purposes of said sections, be exercised or performed by the Secretary of the Interior or by such persons as he may designate. (June 28, 1937, ch. 392, § 6, 50 Stat. 328; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 772f. Penalties relative to records and reports.

Any person violating section 772c of this title shall be subject to a penalty of $50 for each such violation. The Secretary of the Interior is authorized and empowered to mitigate or remit any such penalty in the manner prescribed by law for the mitigation or remission of penalties for violation of the navigation laws. (June 28, 1937, ch. 392, § 7, 50 Stat. 328; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 772g. Exemption of Commission.

None of the prohibitions contained in sections 772 to 772i of this title shall apply to the Commission or its agents when engaged in any scientific investigation. (June 28, 1937, ch. 392, § 8, 50 Stat. 328.)

§ 772h. Rules and regulations.

The Secretary of the Treasury and the Secretary of the Interior are authorized to make such joint rules and regulations as may be necessary to carry out the provisions of sections 772 to 772i of this title. (June 28, 1937, ch. 392, § 9, 50 Stat. 328; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 772i. Effective date.

Sections 772 to 772i of this title shall take effect on the date of exchange of ratifications of the Convention signed by the United States of America and Canada, on January 29, 1937, for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, unless such date shall be prior to June 28, 1937, in which case it shall take effect immediately. (June 28, 1937, ch. 392, § 10, 50 Stat. 328.)

§ 772j. Facilities for Commission; appropriations.

(a) The Secretary of State is authorized to provide, by contract, grant, or otherwise, facilities for office and any other necessary space for the Commission. Such facilities shall be located on or near the campus of the University of Washington in the State of Washington and shall be provided without regard to the cost-sharing provisions in the Convention.

(b) There is authorized to be appropriated such amount, not in excess of $500,000, as may be necessary to carry out the provisions of this section. (June 28, 1937, ch. 392, § 11, as added Oct. 1, 1965, Pub. L. 89-233, 79 Stat. 902.)

29. Northwest Atlantic Fisheries Act of 1950

16 U.S.C. 981–991

Sec.

§ 981. Definitions.

When used in this chapter—

(a) Convention: The word "convention" means the International Convention for the Northwest Atlantic Fisheries signed at Washington under date of February 8, 1949, and any amendments thereto which have entered or may enter into force for the United States including, but not limited to, the 1956 protocol, the 1961 declaration of understanding, the 1963 protocol, and the 1965 protocols.

(b) Commission: The word "Commission" means the International Commission for the Northwest Atlantic Fisheries provided for by article II of the convention.

(c) Person: The word "person" denotes individuals, partnerships, corporations, and associations, subject to the jurisdiction of the United States, or to the jurisdiction of other parties to the convention with respect to international measures of control in force for such parties.

(d) Vessel: The word "vessel" denotes every kind, type, or description of watercraft, aircraft, or other contrivance, used, or capable of being used, as a means of transportation on water subject to the jurisdiction of the United States, or to the jurisdiction of other parties to the convention with respect to international measures of control in force for such parties.

(e) Fishing gear: The term "fishing gear" means any apparatus or appliance of whatever kind or description used or capable of being used for fishing.

(f) Fishing: The word "fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for any species of fish or mammal protected under regulations adopted pursuant to this

chapter.

(g) Fish: The word "fish" means any species of fish, mollusks, crustaceans, including lobsters, and all forms of marine animal life covered by the convention.

(h) International measures of control: The term "international measures of control" means any proposal of the Commission which had entered into force with respect to the United States with regard to measures of control on the high seas which may be undertaken for the purposes of insuring the application of the convention and the measures in force thereunder by the United States with respect to persons or vessels of some or all other parties to the convention and by other parties to the convention with respect to persons or vessels of the United States.

(i) National measures of control: The term "national measures of control" means any proposal of the Commission which has entered into force for the United States with regard to measures of control on the high seas which may be undertaken for the purposes of insuring the application of the convention and the measures in force thereunder by the United States with respect to persons or vessels subject to its jurisdiction, and any other actions which may be undertaken by the United States for the purposes of insuring the application of the convention and the measures in force thereunder to persons or vessels subject to its jurisdiction pursuant to the provisions of this chapter. (As amended Aug. 11, 1971, Pub. L. 92–87, §§ 101–103, 85 Stat. 310; July 10, 1974, Pub. L. 93–339, § 1(a), 88 Stat. 293.)

AMENDMENTS

1974—Pub. L. 93–339 redesignated subsecs. (e) to (j) as (d) to (i), respectively. Former subsec. (d), which defined the term "convention area" was stricken.

1971—Subsec. (a). Pub. L. 92–87, § 101, substituted provisions extending the definition of "Convention" to include amendments which have entered or may enter into force for the United States including the 1956 protocol, the 1961 declaration of understanding, the 1963 protocol and 1965 protocols for provisions extending such definition to include amendments including the 1961 declaration of understanding and the 1963 protocol, as well as the convention signed at Washington under the date of February 8, 1949.

Subsec. (c). Pub. L. 92–87, § 102(a), extended the definition of "person" to include persons subject to the jurisdiction of other parties to the convention with respect to international measures of control in force for such parties.

Subsec. (e). Pub. L. 92–87, § 102(b), extended the definition of "vessel" to include vessels subject to the jurisdiction of other parties to the convention with respect to international measures of control in force for such parties.

Subsecs. (i), (j). Pub. L. 92–87, § 103, added subsecs. (i), (j).

§ 982. Commissioners; appointment and number; rules; compensation.

(a) The United States shall be represented, on the Commission and on any panel in which the United States participates, by three Commissioners to be appointed by the President and to serve at his pleasure. The Commissioners shall be entitled to adopt such rules of procedure as they find necessary. The Secretary of State, in consultation with the Secretary of Commerce, may designate from time to time Alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission or of the United States Commissioners or of the advisory committee established pursuant to section 983 of this title, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

(b) The United States Commissioners or Alternate Commissioners, although officers of the United States Government while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners. (As amended Aug. 11, 1971, Pub. L. 92–87, § 111 (a), (b), 85 Stat. 313.)

AMENDMENTS

1971—Subsec. (a). Pub L. 92–87, § 111(a), added provisions for the designation of Alternate United States Commissioners to insure that the United States is represented by the full number of Commissioners to which it is entitled at any meeting of the Commission, in the event that one or more of the Commissioners are absent.

Subsec. (b). Pub. L. 92–87, § 111(b), substituted "Commissioners or Alternate Commissioners" for "Commissioners" in two places.

§ 983. Advisory Committee; composition; appointment and tenure; meetings; officers; rules; attendance at meetings; compensation; traveling expenses; annual report to Congress.

(a) The United States Commissioners shall appoint an advisory committee composed of not less than five nor more than twenty persons who shall fairly represent the various interests in the fisheries under regulation by the Commission, including fishermen and vessel owners, and who shall be well informed concerning the fisheries under regulation by the Commission. The members of the advisory committee shall serve for a term of two years, and shall be eligible for reappointment. The advisory committee shall meet at least once a year, or more frequently if necessary, shall elect its own officers, and shall be entitled to fix the times and places of its meetings and to adopt rules of procedure for their conduct. The United States Commissioners shall also have the authority to call a meeting of the advisory committee on the request of three members of the committee. The advisory committee, or such representatives as it may designate, may attend as observers all nonexecutive meetings of the Commission or of any panel of which the United States is a member. The advisory committee shall be invited to all nonexecutive meetings of the United States Commissioners and at such meetings shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, and recommendations of the United States Commissioners and all regulations proposed to be issued under the authority of this chapter.

(b) The members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Com-

missioners not more than five members of the advisory committee, designated by the committee, shall be paid for their actual transportation expenses and per diem incident to attendance at meetings of the Commission or a panel thereof. The Secretary of State shall submit an annual report to the Congress of the costs incurred in reimbursing travel and per diem expenses of members of the advisory committee pursuant to this subsection. (As amended July 10, 1974, Pub. L. 93-339, § 1 (b), (c), (g), 88 Stat. 293.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-339, § 1(b), substituted "under regulation by the Commission" for "of the convention area".

Subsec. (b). Pub. L. 93-339, § 1(c), (g), substituted "shall be paid" for "may be paid" and added requirement that the Secretary of State submit an annual report to the Congress of the costs incurred in reimbursing travel and per diem expenses of members of the advisory committee.

§ 984. Commissioners and Alternate Commissioners; service as special government employees.

Service of an individual as a United States Commissioner or Alternate United States Commissioner appointed pursuant to section 982(a) of this title, or as a member of the advisory committee appointed pursuant to section 983(a) of this title, shall be deemed service as a special Government employee of the United States, as defined in section 202 of Title 18. (As amended Aug. 11, 1971, Pub. L. 92-87, § 111 (c), 85 Stat. 313.)

AMENDMENTS

1971—Pub. L. 92-87 amended section to conform the concept of service of Commissioner or Alternate Commissioner as a special government employee of the United States to such service as defined in section 202 of Title 18.

§ 985. Secretary of State to act for United States; regulations.

(a) The Secretary of State is authorized to receive, on behalf of the Government of the United States, reports, requests, recommendations, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities.

(b) The Secretary of State, with the concurrence of the Secretary of Commerce, is authorized to take appropriate action on behalf of the United States with regard to proposals received from the Commission pursuant to article VII of the convention. The Secretary of Commerce shall inform the Secretary of State as to what action he considers appropriate within five months of the date on the notification of the proposal by the depositary government, and again within the first forty days of the additional sixty-day period provided by the convention if a rejection is presented by another party to the convention, or within twenty days after receipt of a rejection received within the additional sixty-day period, whichever date shall be the later. The Secretary of the Department in which the United States Coast Guard is operating shall similarly inform the Secretary of State as to whether he considers that any such proposal relating to international measures of control or national measures of control should be rejected.

(c) In the event that a proposal of the Commission does not come into effect because of a number of objections in accordance with the provisions of paragraph 7 of article VIII of the convention, the Secretary of State, with the concurrence of the Secretary of Commerce and the Secretary of the Department in which the Coast Guard is operating, may nevertheless assent to giving effect to it on an agreed date by agreement with one or more of the parties to the convention, as provided for in that paragraph. (As amended Aug. 11, 1971, Pub. L. 92-87, §§ 104, 105, 85 Stat. 310, 311.)

AMENDMENTS

1971—Subsec. (b). Pub. L. 92-87, § 104, substituted provisions empowering the Secretary of State to take appropriate action with the concurrence of the Secretary of Commerce, with regard to proposals received from the Commission, and requiring the Secretary of Commerce to inform the Secretary of State as to what action he considers appropriate within specified time limits, and requiring the Secretary of the Department in which the Coast Guard is operating to similarly inform the Secretary of State as to whether he considers that any such proposal relating to international measures of control or national measures of control should be rejected for provisions empowering the Secretary of State, to accept or reject proposals received from the Commission with the concurrence of the Secretary of the Interior.

Subsec. (c). Pub. L. 92-87, § 105, added subsec. (c).

§ 986. Administration and enforcement of chapter.

(a) The Secretary of Commerce is authorized and directed to administer and enforce all of the provisions of the convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions he is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the convention and this chapter, and, with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the Government of any party to the convention.

(b) Enforcement activities under the provisions of this chapter relating to vessels engaged in fishing and subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the Department in which the Coast Guard is operating, in cooperation with the Secretary of Commerce. The Secretary of the Department in which the Coast Guard is operating, with the concurrence of the Secretary of Commerce, is authorized and directed to adopt such regulations as may be necessary to provide for national measures of control, and with the concurrence of the Secretary of Commerce and the Secretary of State, for international measures of control and to cooperate with the duly authorized enforcement officials of the Government of any party to the convention.

(c) The Secretary of Commerce may designate officers of the States of the United States to enforce the provisions of the convention, or of this chapter, or of the regulations of the Secretary of Commerce. When so designated such officers are authorized to function as Federal law-enforcement officers for the purposes of this chapter.

(d) Except as otherwise provided in this chapter, the duly authorized officials of any party to the convention shall have the same powers as Federal

law-enforcement officers to enforce the provisions of the convention, or of this chapter, or of the regulations of the Secretaries of Commerce and the Department in which the Coast Guard is operating, with respect to persons or vessels of the United States, pursuant to and to the extent authorized by international measures of control, and such officials are authorized to function as Federal law-enforcement officers for the purposes of this chapter. Such powers shall include, only if and to the extent authorized in international measures of control, arrest of any person or search of any vessel subject to the jurisdiction of the United States, execution of any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this chapter, and seizure of any property. Unless such enforcement is authorized by the international measures of control or by agreement of the United States, such duly authorized officials shall not exercise these powers in any area inhabited by species of fish which are regulated by the Commission in which the United States exercises the same exclusive rights in respect to fisheries as it has in the territorial sea except with regard to vessels of their own flag which may be entitled within such zone, by agreement with the United States, to (1) engage in the fisheries, or to (2) engage in activities in support of a foreign fishery fleet, or to (3) engage in the taking of any Continental Shelf fishery resource which appertains to the United States.

(e) Any duly authorized enforcement officer or employee of the Department of Commerce may be designated by the Secretary of Commerce and any Coast Guard officer may be designated by the Secretary of the Department in which the Coast Guard is operating to enforce international measures of control on behalf of the United States with regard to persons or vessels of any other party to the convention to which the measure is applicable, in any area inhabited by species of fish which are regulated by the Commission except any such area in which any other government exercises the same exclusive rights in respect to fisheries as it has in its territorial sea unless such enforcement is authorized by the international measures of control or by agreement with the government concerned.

(f) Any person designated to enforce international measures of control pursuant to subsection (e) of this section may be directed to attend as witness and to produce such available records and files or duly certified copies thereof as may be necessary to the prosecution in any country party to the convention of any violation of the provisions of the convention or any law or regulation of that country for the enforcement thereof when requested by the appropriate authorities of such country. (As amended Aug. 11, 1971, Pub. L. 92–87, §§ 106, 107, 110(a), (b), 85 Stat. 311, 312; July 10, 1974, Pub. L. 93–339, § 1 (d), (e), 88 Stat. 293.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–339, § 1(d), substituted "any area inhabited by species of fish which are regulated by the Commission" for "that portion of the convention area".

Subsec. (e). Pub. L. 93–339, § 1(e), substituted "any area inhabited by species of fish which are regulated by the Commission except any such area" for "any portion of the convention area except such portions".

1971—Subsec. (a). Pub. L. 92–87, § 110(a), substituted provisions authorizing the Secretary of Commerce to administer and enforce this chapter for provisions authorizing the Secretary of the Interior to administer and enforce this chapter through the Fish and Wildlife Service.

Subsec. (b). Pub. L. 92–87, § 106, substituted provisions imposing primary responsibility for the enforcement of this chapter relating to vessels engaged in fishing and subject to the jurisdiction of the United States on the Secretary of the Department in which the Coast Guard is operating in cooperation with the Secretary of Commerce, and authorizing such Secretary, with the concurrence of the Secretary of Commerce, to adopt regulations to provide for national measures of control, and with the concurrence of the Secretary of Commerce and the Secretary of State, for international measures of control and to cooperate with the duly authorized enforcement officials of the Government of any party to the Convention for provisions imposing such responsibility on the United States Coast Guard in cooperation with the Fish and Wildlife Service.

Subsec. (c). Pub. L. 92–87, § 110(b), substituted "Secretary of Commerce" for "Secretary of the Interior" in two places.

Subsecs. (d)–(f). Pub. L. 92–87, § 107, added subsecs. (d)–(f).

§ 987. Cooperation with other agencies; Commission's functions not restrained by this chapter or State laws.

(a) The Secretary of State with the concurrence of the agency, institution, or organization concerned, may direct the United States Commissioners to arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article VI of the convention.

(b) All agencies of the Federal Government are authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the convention.

(c) None of the prohibitions deriving from this chapter, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the convention.

(d) Nothing in this chapter shall be construed to limit or to add to the authority of the individual States to exercise their existing sovereignty within the presently defined limits of the territorial waters of the respective States. (Sept 27, 1950, ch. 1054, § 8, 64 Stat. 1069.)

§ 988. Unlawful activities.

(a) It shall be unlawful for any person subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to this chapter or of any order of a court issued pursuant to section 989 of this title, to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of any such regu-

lations, or order, to fail to make, keep, submit, or furnish any record or report required of him by such regulation, or to refuse to permit any officer authorized to enforce such regulations to inspect such record or report at any reasonable time.

(b) It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to do any act prohibited or fail to do any act required by any regulation adopted pursuant to this chapter.

(c) It shall be unlawful for the master or owner or any person in charge of any vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, including in any area inhabited by species of fish which are regulated by the Commission the duly authorized officials of any party to the convention authorized to undertake international measures of control, to board such vessel or inspect its equipment, books, documents, or other articles or question the persons on board in accordance with the provisions of the convention, this chapter, regulations adopted pursuant thereto, international measures of control, and national measures of control, or to obstruct such officials in the execution of such duties. (As amended Aug. 11, 1971, Pub. L. 92–87, § 108, 85 Stat. 312; July 10, 1974, Pub. L. 93–339, § 1(f), 88 Stat. 293.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–339 substituted "any area inhabited by species of fish which are regulated by the Commission" for "the convention area".

1971—Subsec. (c). Pub. L. 92–87 added subsec. (c).

§ 989. Penalties.

(a) Any person violating subsection (a) or (b) of section 988 of this title or any regulation adopted by the Secretary of Commerce pursuant to this chapter, upon conviction, shall be fined for a first offense not more than $500 and for a subsequent offense committed within five years not more than $1,000 and for such subsequent offense the court may order forfeited, in whole or in part, the fish taken by such person, or the fishing gear involved in such fishing, or both, or the monetary value thereof. Such forfeited fish or fishing gear shall be disposed of in accordance with the direction of the court.

(b) Any person violating subsection (c) of section 988 of this title or any regulation adopted pursuant to this chapter, upon conviction, shall be fined for a first offense not more than $1,000 and be imprisoned for not more than six months, or both, and for a subsequent offense committed within five years not more than $10,000 and be imprisoned for not more than one year, or both. (As amended Aug. 11, 1971, Pub. L. 92–87, § 109, 85 Stat. 312.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 92–87, § 109(a) (1), (2), (3), redesignated existing provisions as subsec. (a) and in subsec. (a) so redesignated, substituted "subsection (a) or (b) of section 988 of this title or any regulation adopted by the Secertary of Commerce pursuant to this chapter" for "any provision of this chapter or any regulation adopted pursuant to this chapter".

Subsec. (b). Pub. L. 92–87, § 109(a)(4), added subsec. (b).

§ 990. Arrests; enforcement officers; warrants and processes; searches and seizures; stay of execution; bond or stipulation.

(a) Any duly authorized enforcement officer or employee of the Department of Commerce; any Coast Guard officer; any United States marshal or deputy United States marshal; any customs officer; and any other person authorized to enforce the provisions of the convention, this chapter, and the regulations issued pursuant thereto, shall have power without warrant or other process to arrest any person subject to the jurisdiction of the United States committing in his presence or view a violation of the convention or of this chapter, or of the regulations issued pursuant thereto and to take such person immediately for examination before a justice or judge or any other official designated in section 3041 of Title 18; and shall have power, without warrant or other process, to search any vessel subject to the jurisdiction of the United States when he has reasonable cause to believe that such vessel is engaging in fishing in violation of the provisions of the convention or this chapter, or the regulations issued pursuant thereto. Any person authorized to enforce the provisions of the convention, this chapter, or the regulations issued pursuant thereto shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this chapter, and shall have power with a search warrant to search any vessel, vehicle, person, or place at any time. The judges of the United States district courts and the United States Commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Any person authorized to enforce the provisions of the convention, this chapter, or the regulations issued pursuant thereto may, except in the case of a first offense, seize, whenever and wherever lawfully found, all fish taken or retained, and all fishing gear involved in fishing, contrary to the provisions of the convention or this chapter or to regulations issued pursuant thereto. Any property so seized shall not be disposed of except pursuant to the order of a court of competent jurisdiction or the provisions of subsection (b) of this section, or, if perishable, in the manner prescribed by regulations of the Secretary of Commerce.

(b) Notwithstanding the provisions of section 2464 of Title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation for double the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the property seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall

be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court.
(As amended Aug. 11, 1971, Pub. L. 92-87, § 110 (c), (d), 85 Stat. 312.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 92-87 substituted "Department of Commerce" for "Fish and Wildlife Service of the Department of the Interior" and "Secretary of Commerce" for "Secretary of the Interior".

§ 991. Appropriations.

There is authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for carrying out the purposes and provisions of this chapter, including the United States share of the joint expenses of the Commission as provided in article XI of the convention; for the expenses of the United States Commissioners, alternate United States Commissioners, and authorized advisers. (As amended Aug. 11, 1971, Pub. L. 92-87, § 111(d), 85 Stat. 313.)

AMENDMENTS

1971—Pub. L. 92-87 substituted "Commissioners, Alternate United States Commissioners," for "Commissioners".

30. Offshore Shrimp Fisheries

16 U.S.C. 1100b–1100b–10

Sec.

§ 1100b. Definitions.

When used in this chapter—

(a) the term "treaty" shall mean the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975, including related annexes, notes, and agreed minutes as these documents may be amended from time to time;

(b) the term "shrimp" shall mean the shrimp Penaeus (M.) duorarum notialis, Peneaus brasiliensis and Penaeus (M.) aztecus subtilis;

(c) the term "area of agreement" shall mean the area in which United States vessels carry on a shrimp fishery in the vicinity of Brazil, as described by the following boundaries: the waters off the coast of Brazil having the isobath of thirty meters as the southwest limit, the latitude 1 degree north as the southern limit, the longitude 47 degrees 30 minutes west as the eastern limit, and a line running from the point of 4 degrees 44 minutes north latitude, 51 degrees 30 minutes west longitude at an azimuth of 17 degrees to the point of 4 degrees 51 minutes north latitude, 51 degrees 28 minutes west longitude and thence at an azimuth of 43 degrees to the point of 8 degrees 58 minutes north latitude, 47 degrees 30 minutes west longitude as the northwestern boundary;

(d) the term "vessel" shall mean every description of watercraft or other contrivance used, or capable of being used, as a means of transportation in water;

(e) the term "Secretary" shall mean the Secretary of Commerce or his delegate;

(f) the term "transship" shall mean the transfer of shrimp from one vessel to another vessel, or the receipt of shrimp by one vessel from another vessel;

(g) the term "fishing" shall mean the taking or attempted taking of shrimp by any means whatsoever;

(h) the term "vessel owner" shall mean any

person, partnership, corporation, or association which is the owner of record of a vessel documented under the laws of the United States, except that, with respect to sections 1100b–2 and 1100b–3 of this title, the Secretary may issue such regulations as he deems appropriate to cover applications for an issuance of letters of voluntary compliance and permits with respect to vessels owned by corporations which are owned or controlled by one or more other corporations;

(i) the term "regulations" shall mean rules and regulations issued by the Secretary from time to time as he deems necessary to carry out the purposes and objectives of the treaty and this chapter; and

(j) the term "gear" when applied to any vessel involved in a violation shall mean any single set of net and doors for a single trawl vessel, or for a vessel capable of towing more than one set at a time, as many sets of net and doors as the vessel is capable of towing: *Provided,* That if the vessel owner, master, or other person in charge of the vessel can show that a particular set (or sets) of net and doors was actually involved in the violation, then that set (or sets) shall be deemed to be the gear of the vessel involved in the violation.

(Pub. L. 93–242, § 2, Jan. 2, 1974, 87 Stat. 1061, amended Pub. L. 94–58, § 3(a), July 24, 1975, 89 Stat. 266.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–58 substituted "March 14, 1975" for "May 9, 1972".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of Pub. L. 94–58 provided that:

"(a) Except as provided in subsection (b), the foregoing provisions of this Act [amending section 1100b–3 of this title] shall take effect on the date of the enactment of this Act [July 24, 1975].

"(b) The amendments made by subsections (a), (b), (c), (e), (f), and (g) of section 3 [amending subsec. (a) of this section and sections 1100b–1, 1100b–2, 1100–4, 1100b–6 and 1100b–7 of this title] shall take effect upon the entry into force of the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975."

TERMINATION DATE

Section 13 of Pub. L. 93–242, as amended by section 2 of Pub. L. 94–58, provided in part that the provisions of this chapter shall expire September 30, 1977.

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94–58 provided that: "This Act [which amended this section and sections 1100b–1, 1100b–2, 1100b–3, 1100b–4, 1100b–6 and 1100b–7 of this title, enacted provisions set out as a note under this section, and amended provisions set out as a note under this section] may be cited as the 'Offshore Shrimp Fisheries Act Amendments of 1975'."

SHORT TITLE

Section 1 of Pub. L. 93–242 provided: "That this Act [enacting this chapter and amending section 1085 of this title] may be cited as the 'Offshore Shrimp Fisheries Act of 1973'."

SEVERABILITY OF PROVISIONS

Section 14 of Pub. L. 93–242 provided that: "The provisions of this Act [this chapter] shall be severable and if any part of the Act [this chapter] is declared unconstitutional or the applicability thereof is held invalid, the constitutionality of the remainder and the applicability thereof shall not be affected thereby."

§ 1100b–1. Permits.

(a) Issuance authorized; maximum number of authorized vessels.

The Secretary is authorized to issue permits to vessel owners for vessels documented under the laws of the United States to engage in fishing in the area of agreement: *Provided,* That the number of vessels which are the subject of permits shall not exceed three hundred and twenty-five or such other number of vessels as may be specified in the treaty from time to time as authorized to fish in the area of agreement: *Provided further,* That no more than two hundred vessels with permits shall be authorized to fish in any quarter of 1975 beginning March 1 and ending February 29, 1976, and no more than one hundred and seventy-five vessels with permits shall be authorized to fish in any quarter of 1976 beginning March 1 and ending February 28, 1977, or such other number or period as may be specified in the treaty from time to time. No vessel owner may be issued a permit with respect to a vessel unless such vessel meets the requirements of the treaty, this chapter, and the regulations.

(b) Permits valid only for vessels to which issued; transfer.

Except as provided in section 1100b–2(d) of this title, a permit shall be valid only for the vessel with respect to which it is issued and shall not cover more than one vessel, except that a vessel owner may, with the prior consent of the Secretary, transfer a permit to another vessel whether or not owned by the same vessel owner.

(c) Annual renewal.

Permits shall be issued for a calendar year, and may be renewed annually.

(d) Terms and conditions of issuance.

Permits shall contain such provisions, and shall be issued upon, and subject to, such terms and conditions as the Secretary deems necessary to carry out the treaty, this chapter, and the regulations. Permit provisions may include, but are not limited to—

(i) the manner, place, and time of conducting fishing operations,

(ii) the keeping of records,

(iii) the furnishing of information to the Secretary,

(iv) the identification and marking of the vessels,

(v) limitations on transshipment operations,

(vi) restrictions or prohibitions on the employment on any permitted vessel of a master or other person against whom a civil penalty has been assessed pursuant to section 1100b–7 of this title,

(vii) prohibited activities,

(viii) revocation of permit for failure to pay a civil penalty assessed against a vessel owner pursuant to section 1100b–7 of this title, and

(ix) the maintaining of an office in the United States by the holder of a permit at which all notices, legal documents, and other material may be served.

Permits may be suspended or revoked by the Secretary for failure to comply with any of the terms or

conditions thereof, or with the treaty, this chapter or the regulations. Upon any such suspension or revocation, the permittee shall be afforded a prompt opportunity, after due notice, for a hearing by the Secretary. The decision of the Secretary rendered in connection with such hearing shall be final and binding.

(e) Return of permit to Secretary; refund of annual permit fee.

Permits may be returned to the Secretary. In addition, the Secretary may issue regulations requiring the return of unutilized permits under such circumstances and upon such terms and conditions as he deems appropriate. If the Secretary reissues a permit to another vessel owner, a prorated amount of the annual permit fee for the portion of the year during which the permit is held by another vessel owner shall be refunded to the original permittee. Except as specified in this subsection (e) and in section 1100b–2(c) of this title, permit fees shall not be prorated.

(f) Annual fee.

The annual fee for a permit shall be $1,115 for enforcement services plus an amount of not more than $100, as determined by the Secretary, for the purpose of covering administrative costs. The amount of any deposit transferred to the Offshore Shrimp Fisheries Fund pursuant to section 1100b–3 of this title shall be credited toward the annual permit fee.

(g) Surrender of suspended or revoked permits.

Any permit which has been suspended or revoked, or which is required to be returned, shall be surrendered to the Secretary. (Pub. L. 93–242, § 3, Jan. 2, 1974, 87 Stat. 1063, amended Pub. L. 94–58, § 3(b), July 24, 1975, 89 Stat. 266.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–58, § 3(b)(1), added proviso relating to the number of vessels authorized to fish in any quarter of 1975 beginning March 1 and ending Feb. 29, 1976, and in any quarter of 1976 beginning March 1 and ending Feb. 28, 1977.

Subsec. (f). Pub. L. 94–58, § 3(b)(2), substituted "The annual fee for a permit shall be $1,115" for "The annual fee for a permit for any year other than 1973 shall be $615", struck out provision for a 1973 permit fee of $1,230 for enforcement services plus not more than $200, as determined by the Secretary, for administrative costs, and proviso for a 1973 permit fee of $615 for enforcement services plus not more than $100 for administrative costs for any vessel first documented in that year or certified as not having been engaged in fishing in the area of agreement in 1972.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–58 effective upon the entry into force of the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975, see section 4(b) of Pub. L. 94–58, set out as a note under section 1100b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1100b–2, 1100b–4, 1100b–6 of this title.

§ 1100b–2. Permit procedure.

(a) Method and time for application.

Vessel owners may apply for permits to engage in fishing in the area of agreement. The method and time for application shall be announced in advance in the Federal Register.

(b) Refusal of application; petition for reconsideration; hearing; final and binding decision.

The owner of any vessel for which application for a permit is refused may petition the Secretary for reconsideration, and shall be entitled to a hearing. The decision of the Secretary rendered in connection with such reconsideration shall be final and binding.

(c) Reissuance of returned permits; fee.

The Secretary may reissue permits which have been returned pursuant to section 1100b–1 of this title, to vessel owners with outstanding applications, who have not been able to obtain permits under the procedure set out in subsection (d) of this section. The fee for such reissued permits shall be the prorated share of the annual fee for the portion of the year during which the new permittee holds the permit.

(d) Procedure for granting permits when application is made for more vessels than the number allowed to be issued.

If application is made with respect to more vessels than the number of permits allowed to be issued under section 1100b–1(a) of this title, the following procedure for granting permits shall apply:

(1) All vessel owners to whom letters of voluntary compliance have been issued after March 14, 1975, pursuant to section 1100b–3 of this title, shall have first priority for permits but only as to vessels covered by such letters.

(2) After all vessel owners under subparagraph (1) have been considered for permits, all vessel owners who have been engaged in fishing under permits in the area of agreement, after May 9, 1972, shall have second priority for permits. However, in no event shall a vessel owner be eligible for receiving a permit under this subsection for a given vessel during the first six months after the effective date described in section 4(b) of the Offshore Shrimp Fisheries Act Amendments of 1975, if the Secretary determines that such vessel has engaged in activities during the period from March 14, 1975, to such effective date, which would have constituted a violation specified in section 1100b–6(a)(3) or 1100b–6(a)(5) of this title, but only to the extent section 1100b–6(a)(5) of this title relates to use of fishing gear, fishing vessels and fishing methods, and the closure of the area of agreement to fishing. In the event of any such determination, the vessel owner affected thereby shall be given notice thereof and an opportunity for a hearing. The decision of the Secretary rendered in connection with the hearing shall be final and binding.

(3) After all vessel owners under subparagraphs (1) and (2) have been considered for issuance of a permit, all other vessel owners who have made application may be considered for permits.

If the number of vessels for which application is made in the categories outlined in subparagraph (2) or (3) is more than the number of permits available after having accounted for the vessels in the previous category (or in the case of subparagraph (1), if the number of vessels for which application is made in that category is more than the number of permits available pursuant to the treaty), then the number

of permits available shall be proportionally distributed with the applicable category, in a manner provided in the regulations. (Pub. L. 93–242, § 4, Jan. 2, 1974, 87 Stat. 1064, amended Pub. L. 94–58, § 3(c), July 24, 1975, 89 Stat. 266.)

REFERENCES IN TEXT

Section 4(b) of the Offshore Shrimp Fisheries Act Amendments of 1975, referred to in subsec. (d)(2) of this section, is section 4(b) of Pub. L. 94–58, and is set out as a note under section 1100b of this title.

AMENDMENTS

1975—Subsec. (d)(1). Pub. L. 94–58, § 3(c)(1), added "after March 14, 1975" following "issued".

Subsec. (d)(2). Pub. L. 94–58, § 3(c)(2),(3), substituted "engaged in fishing under permits in the area" for "engaged in fishing in the area", "after May 9, 1972" for "during the last five years", "six months after the effective date described in section 4(b) of the Offshore Shrimp Fisheries Act Amendments of 1975" for "six months after January 2, 1974", "March 14, 1975" for "May 9, 1972", "to such effective date" for "to January 2, 1974", added "fishing vessels and fishing methods" following "fishing gear" and struck out "if this chapter had been in effect during such period" following "area of agreement to fishing".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–58 effective upon the entry into force of the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975, see section 4(b) of Pub. L. 94–58, set out as a note under section 1100b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1100b, 1100b–1 of this title.

§ 1100b–3. Voluntary compliance.

The Secretary shall issue a letter of voluntary compliance to a vessel owner who has had vessels engaged in fishing in the area of agreement at any time subsequent to March 14, 1975, for all vessels of such owner documented under the laws of the United States which meet the requirements of the treaty, and for each of which the vessel owner has deposited and continuously maintained, until the transfer referred to in the following sentence, $1,215 in a special account in a bank or trust company insured by the Federal Deposit Insurance Corporation for the purpose of reimbursing the United States for enforcement expenses as provided in article 6 of the treaty. On or before the issuance of a letter of voluntary compliance the deposited funds referred to above shall be transferred, in the manner provided for in regulations, through the Secretary, to the Offshore Shrimp Fisheries Fund, established pursuant to section 1100b–4 of this title. (Pub. L. 93–242, § 5, Jan. 2, 1974, 87 Stat. 1065, amended Pub. L. 94–58, § 3(d), July 24, 1975, 89 Stat. 267.)

AMENDMENTS

1975—Pub. L. 94–58 substituted "March 14, 1975" for "May 9, 1972", and "$1,215" for "$700".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–58 effective July 24, 1975, see section 4(a) of Pub. L. 94–58, set out as a note under section 1100b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1100b, 1100b–1, 1100b–2, 1100b–4 of this title.

§ 1100b–4. Offshore Shrimp Fisheries Fund.

(a) Establishment on books of United States Treasury.

There is hereby established on the books of the Treasury a separate fund, the Offshore Shrimp Fisheries Fund, to be used by the Secretary to make payments for enforcement expenses as provided in article VI of the treaty. The fund shall be credited with permit fees collected pursuant to section 1100b–1 of this title for enforcement expenses, funds appropriated under section 1100b–10(a) of this title, amounts transferred through the Secretary from deposits in the special accounts referred to in section 1100b–3 of this title, and amounts collected for minimum penalties pursuant to section 1100b–1 of this title. Any funds remaining in the fund shall remain available for expenditure under this chapter.

(b) Enforcement expenses.

The Secretary of Commerce, through the Secretary of State, shall pay, or cause to be paid, on behalf of the United States the enforcement expenses as provided in article VI of the treaty.

(c) Reimbursement of amounts paid on behalf of United States in carrying out seizure and detention of vessels.

In the event that a vessel owner, master, or other person in charge of a vessel, pays on behalf of the United States the unusual enforcement expenses incurred in carrying out the seizure and detention of a vessel, referred to in article VI of the treaty, and is not assessed a civil penalty under section 1100 b–7 of this title within two years from the date of such seizure in respect to the violation for which the vessel was seized, such vessel owner, master, or other person shall be entitled to reimbursement of amounts so paid. Application for reimbursement shall be made to the Secretary. (Pub. L. 93–242, § 6, Jan. 2, 1974, 87 Stat. 1065, amended Pub. L. 94–58, § 3(e), July 24, 1975, 89 Stat. 267.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–58 added provision relating to the availability for expenditure under this chapter of any funds remaining in the fund.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–58 effective upon the entry into force of the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975, see section 4(b) of Pub. L. 94–58, set out as a note under section 1100b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1100b–3 of this title.

§ 1100b–5. Information and reports.

(a) Logbooks.

Each master or other person in charge of a vessel which is the subject of a permit under this chapter shall keep a logbook in the form and manner prescribed pursuant to the treaty and set forth in regulations.

(b) Additional information; time and form for supplying information to Secretary.

In addition to the logbook, owners of vessels which have permits under this chapter shall supply

to the Secretary, in such form and at such times as he may prescribe, any other information necessary in order to carry out the purposes and objectives of the treaty, this chapter or the regulations, which information may include data on fishing beyond the area of agreement in order to determine to the extent possible the full potential of the shrimp fishery.

(c) Confidential nature of information.

Except as otherwise provided in the treaty, information obtained pursuant to this chapter shall be treated as confidential commercial information pursuant to section 552 of Title 5.

(d) Subpena power.

The Secretary shall have the power to require by subpena the production of all such logbooks, records, or other information required pursuant to this section. The Secretary may delegate the power to sign subpenas and to receive documents.

(e) Judicial enforcement of subpena.

In case of contumacy or refusal to obey a subpena issued to any person, corporation, partnership, or other entity, the Secretary may request the Attorney General to invoke the aid of any district court of the United States or the United States courts of any territory or possession within the jurisdiction of which said person, corporation, partnership, or other entity is found, resides, or transacts business to secure compliance. (Pub. L. 93–242, § 7, Jan. 2, 1974, 87 Stat. 1065.)

§ 1100b–6. Prohibitions.

(a) No vessel owner, master, or other person in charge of a vessel documented under the laws of the United States shall—

(1) engage in fishing in the area of agreement, unless the vessel is the subject of a permit in force pursuant to this chapter

(2) transship shrimp in the area of agreement, unless each vessel engaged in the transshipment is the subject of a permit in force pursuant to this chapter, or is otherwise authorized to fish in the area of agreement pursuant to the treaty;

(3) assault or attempt to prevent any duly authorized officer from boarding, searching, seizing or detaining a vessel in accordance with such officer's duties under the treaty;

(4) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels allowed to be present in the area of agreement at any one time to one hundred and sixty in 1975 and one hundred and twenty in 1976 or such other number as may be allowed pursuant to the treaty;

(5) engage in fishing in the area of agreement in contravention of annex II, as it may be modified from time to time pursuant to article II of the treaty, or any regulations issued by the Secretary to implement such annex;

(6) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels with permits which may be authorized to fish during any period in 1975 or 1976 as specified in section 1100b–1(a) of this title.

(b) No vessel owner, master, or other person in charge of a vessel documented under the laws of the United States shall—

(1) fail or refuse to keep or provide any logbooks or any other information required pursuant to this chapter, or provide or furnish false logbooks or other information;

(2) violate any other provision of the treaty, this chapter, or any regulations promulgated by the Secretary, the violation of which is not covered by subsection (a) of this section.

(Pub. L. 93–242, § 8, Jan. 2, 1974, 87 Stat. 1066, amended Pub. L. 94–58, § 3(f), July 24, 1975, 89 Stat. 267.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–58, § 3(f)(1)(A), added "vessel owner" preceding "master" in opening par.

Subsec. (a)(4). Pub. L. 94–58, § 3(f)(2), added "in 1975 and one hundred and twenty in 1976" following "one hundred and sixty".

Subsec. (a)(6). Pub. L. 94–58, § 3(f)(1)(C), added subsec. (a)(6).

Subsec. (b). Pub. L. 94–58, § 3(f)(3), added "vessel owner" preceding "master" in opening par.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–58 effective upon the entry into force of the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975, see section 4(b) of Pub. L. 94–58, set out as a note under section 1100b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1100b–2, 1100b–7 of this title.

§ 1100b–7. Penalties.

(a) Civil penalty; maximums; minimum penalty requirement; notice and opportunity for hearing.

Any master or other person in charge of a vessel who violates section 1100b–6 of this title, or any vessel owner whose vessel is involved in such violation, may be assessed a civil penalty by the Secretary, after notice and opportunity for a hearing, of not more than $10,000 for a violation of section 1100b–6(a) of this title and $3,000 for a violation of section 1100b–6(b) of this title. Except as provided in this section, the minimum penalty assessed shall be not less than an amount sufficient to cover the unusual enforcement expenses, if any, incurred by the United States pursuant to article VI of the treaty in connection with such violation: *Provided,* That if the person against whom the penalty has been assessed has paid on behalf of the United States such unusual enforcement expenses, the minimum penalty requirement shall not apply. The amount of any such minimum civil penalty assessed shall be deposited directly into the Offshore Shrimp Fisheries Fund. The amount of any such civil penalty over the minimum penalty may be compromised by the Secretary.

(b) Notification of vessel owner.

The Secretary shall notify any vessel owner involved in a violation of section 1100b–6 of this title of the outcome of any proceeding against the master or other person in charge of the vessel under subsection (a) above.

(c) Penalty equal to value of catch on board and value of gear involved in violation.

The Secretary, after notice and opportunity for

hearing, may assess against a vessel owner a civil penalty equal to the value of the catch on board the vessel when detained and the value of the gear involved in a violation of section 1100b–6 of this title. The amount of any such penalty shall be deposited as miscellaneous receipts into the general fund of the Treasury.

(d) Failure to pay penalty; court action.

Upon failure of the party penalized as provided in this section to pay the penalty within thirty days of the assessment thereof, the Secretary may request the Attorney General to commence action in the Federal district court having jurisdiction over the party for such relief as may be appropriate. In any such action for relief, the Secretary's penalty assessment shall be final and unreviewable unless the penalized party has otherwise sought judicial review thereof.

(e) Personal appearance at hearing.

In any hearing held by the Secretary in connection with the assessment of a civil penalty hereunder, the vessel owner, the master or any other person against whom a penalty may be assessed may appear in person or by counsel at such hearing or in lieu of a personal appearance may submit such affidavits or depositions as he deems necessary to the defense of any charges which may be considered by the Secretary at such hearing. (Pub. L. 93–242, § 9, Jan. 2, 1974, 87 Stat. 1066, amended Pub. L. 94–58, § 3(g), July 24, 1975, 89 Stat. 267.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–58, § 3(g)(1), added "or any vessel owner whose vessel is involved in such violation" following "who violates section 1100b–6 of this title".

Subsec. (b). Pub. L. 94–58, § 3(g)(2), added "against the master or other person in charge of the vessel" following "any proceeding".

Subsec. (c). Pub. L. 94–58, § 3(g)(3), substituted provisions making the vessel owner subject to a civil penalty for violation of any provision of section 1100b–6 for provisions imposing such penalty only in the case of violation of section 1100b–6(a)(1), or involved in a second or subsequent violation of any other provision of 1100b–6(a) by a person against whom a penalty had previously been assessed under subsec. (a) of this section for a violation involving the operation of a vessel owned by the same person as the vessel involved in such second or subsequent violation.

§ 1100b–8. Enforcement.

(a) This chapter shall be enforced jointly by the Secretary, the Secretary of the department in which the Coast Guard is operating, and the Secretary of the Treasury.

(b) Any duly authorized law enforcement officer of the Government of Brazil who is exercising responsibility under article V of the treaty shall be impowered to act on behalf of the United States to enforce the provisions of the treaty in the area of agreement as follows: Any such officer may board and search any vessel which he has reasonable cause to believe has violated any provisions of the treaty. If after boarding and searching such vessel the officer continues to have reasonable cause to believe that a violation has been committed, he may seize and detain the vessel for the sole purpose of delivering it, as soon as practicable, to an agent of the United States Government at the nearest port to the place of seizure or any other place which is mutually agreed upon by the Government of Brazil and the Secretary of State. (Pub. L. 93–242, § 10, Jan. 2, 1974, 87 Stat. 1067.)

§ 1100b–9. Regulations.

In addition to any specific authority contained in this chapter, the Secretary is authorized to issue all regulations necessary to carry out the purposes and objectives of the treaty and this chapter. Prior to the issuance of any regulations dealing with the marking of vessels of with the use or radiotelephone frequencies, the Secretary shall consult with the Secretary of the department in which the Coast Guard is operating. (Pub. L. 93–242, § 11, Jan. 2, 1974, 87 Stat. 1067.)

§ 1100b–10. Authorization of appropriations.

(a) There is hereby authorized to be appropriated such amounts as are necessary for enforcement expenses pursuant to article VI of the treaty, to be deposited in the Offshore Shrimp Fisheries Fund.

(b) There is also hereby authorized to be appropriated such amounts as are necessary for domestic enforcement expenses and the expenses of administering the provisions of the treaty, this chapter, and the regulations, to be available until expended, when so provided in appropriation acts. So much of the permit fees as are identified for administrative costs shall be deposited as miscellaneous receipts to the general fund of the Treasury. (Pub. L. 93–242, § 12, Jan. 2, 1974, 87 Stat. 1068.)

31. Preservation of Fishery Resources

16 U.S.C. 755–7601

Sec.

§ 755. Salmon-cultural stations; establishment; expenditure of funds.

The Secretary of the Interior is authorized and directed to establish one or more salmon-cultural stations in the Columbia River Basin in each of the States of Oregon, Washington, and Idaho. Any sums appropriated for the purpose of establishing such stations may be expended, and such stations shall be established, operated and maintained, in accordance with the provisions of the Act entitled "An Act to provide for a five-year construction and maintenance program for the United States Bureau of Fisheries", approved May 21, 1930, ch. 306, 46 Stat. 371; insofar as the provisions of such Act are not inconsistent with the provisions of this section and sections 756 and 757 of this title. (May 11, 1938, ch. 193, § 1, 52 Stat. 345; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 756. Investigations, surveys, and experiments; construction and installation of conservation devices, etc.

The Secretary of the Interior is further authorized and directed (1) to conduct such investigations, and such engineering and biological surveys and experiments, as may be necessary to direct and facilitate conservation of the fishery resources of the Columbia River and its tributaries; (2) to construct and install devices in the Columbia River Basin for the improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects, and for facilitating free migration of fish over obstructions; and (3) to perform all other activities necessary for the conservation of fish in the Columbia River Basin in accordance with law. (May 11, 1938, ch. 193, § 2, 52 Stat. 345; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; Aug. 8, 1946, ch. 883, § 1, 60 Stat. 932.)

§ 757. Utilization of State services; expenditure of funds.

In carrying out the authorizations and duties imposed by section 756 of this title, the Secretary of the Interior is authorized to utilize the facilities and services of the agencies of the States of Oregon, Washington, and Idaho responsible for the conservation of the fish and wildlife resources in such States, under the terms of agreements entered into between the United States and these States, without regard to the provisions of section 5 of Title 41, and funds appropriated to carry out the purposes of this section and section 756 of this title may be expended for the construction of facilities on and the improvement of lands not owned or controlled by the United States: *Provided*, That the appropriate agency of the State wherein such construction or improvement is to be carried on first shall have obtained without cost to the United States the necessary title to, interest therein, rights-of-way over, or licenses covering the use of such lands. (May 11, 1938, ch. 193, § 3, 52 Stat. 345; Aug. 8, 1946, ch. 883, § 2, 60 Stat. 932.)

AMENDMENTS

1946—Act Aug. 8, 1946, amended section generally to provide for the utilization of State services, and for the expenditure of funds for the construction of facilities and improvements on lands not owned by the United States.

§ 757a. Anadromous and Great Lakes fisheries.

(a) Conservation, development, and enhancement; cooperative agreements with States and other non-Federal interests; terms and conditions; Federal and non-Federal costs.

For the purpose of conserving, developing, and enhancing within the several States the anadromous fishery resources of the Nation that are subject to depletion from water resources developments and other causes, or with respect to which the United States has made conservation commitments by international agreements, and for the purpose of conserving, developing, and enhancing the fish in the Great Lakes that ascend streams to spawn, the Secretary of the Interior is authorized to enter into cooperative agreements with one or more States, acting jointly or severally, that are concerned with the develop-

ment, conservation, and enhancement of such fish, and, whenever he deems it appropriate, with other non-Federal interests. Such agreements shall describe (1) the actions to be taken by the Secretary and the cooperating parties, (2) the benefits that are expected to be derived by the States and other non-Federal interests, (3) the estimated cost of these actions, (4) the share of such costs to be borne by the Federal Government and by the States and other non-Federal interests: *Provided*, That; except as provided in subsection (c) of this section, the Federal share, including the operation and maintenance costs of any facilities constructed by the Secretary pursuant to sections 757a to 757f of this title, which he annually determines to be a proper Federal cost, shall not exceed 50 per centum of such costs exclusive of the value of any Federal land involved: *Provided, further*, That the non-Federal share may be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money, (5) the term of the agreement, (6) the terms and conditions for disposing of any real or personal property acquired by the Secretary during or at the end of the term of the agreement, and (7) such other terms and conditions as he deems desirable.

(b) Operation, management, and administration of property.

The Secretary may also enter into agreements with the States for the operation of any facilities and management and administration of any lands or interests therein acquired or facilities constructed pursuant to sections 757a to 757f of this title.

(c) Increase of Federal share.

Whenever two or more States having a common interest in any basin jointly enter into a cooperative agreement with the Secretary under subsection (a) of this section to carry out a research and development program to conserve, develop, and enhance anadromous fishery resources of the Nation, or fish in the Great Lakes that ascend streams to spawn, the Federal share of the program costs shall be increased to a maximum of 66⅔ per centum. Structures, devices, or other facilities, including fish hatcheries, constructed by such States under a cooperative agreement described in this subsection shall be operated and maintained without cost to the Federal Government. For the purpose of this subsection, the term "basin" includes rivers and their tributaries, lakes, and other bodies of water or portions thereof. (As amended Pub. L. 93–362, § 3(a), July 30, 1974, 88 Stat. 398.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–362 substituted "66⅔ per centum" for "60 per centum".

§ 757b. Same; investigations, surveys, and research; stream clearance activities; conservation devices and structures; fish hatcheries; studies, recommendations, and reports to States, Congress, and Federal water resources construction agencies; water resources projects; property: acquisition, exchanges, cash equalization payments, donations, administration, and title.

The Secretary, in accordance with any agreements entered into pursuant to section 757a(a) of this title, is authorized (1) to conduct such investigations, engineering and biological surveys, and research as may be desirable to carry out the program; (2) to carry out stream clearance activities; (3) to construct, install, maintain, and operate devices and structures for the improvement of feeding and spawning conditions, for the protection of fishery resources, and for facilitating the free migration of the fish, and for the control of the sea lamprey; (4) to construct, operate, and maintain fish hatcheries wherever necessary to accomplish the purposes of sections 757a to 757f of this title; (5) to conduct such studies and make such recommendations as the Secretary determines to be appropriate regarding the development and management of any stream or other body of water for the conservation and enhancement of anadromous fishery resources and the fish in the Great Lakes that ascend streams to spawn: *Provided*, That the reports on such studies and the recommendations of the Secretary shall be transmitted to the States, the Congress, and the Federal water resources construction agencies for their information: *Provided further*, That sections 757a to 757f of this title shall not be construed as authorizing the formulation or construction of water resources projects, except that water resources projects which are determined by the Seeretary[1] to be needed solely for the conservation, protection, and enhancement of such fish may be planned and constructed by the Bureau of Reclamation in its currently authorized geographic area of responsibility or by the Corps of Engineers, or by the Department of Agriculture, or by the States, with funds made available by the Secretary under sections 757a to 757f of this title and subject to the cost-sharing and appropriations provisions of sections 757a to 757f of this title; (6) to acquire lands or interests therein by purchase, lease, donation, or exchange for acquired lands or public lands under his jurisdiction which he finds suitable for disposition: *Provided*, That the lands or interests therein so exchanged shall involve approximately equal values, as determined by the Secretary: *Provided further*, That the Secretary may accept cash from, or pay cash to, the grantor in such an exchange in order to equalize the values of the properties exchanged; (7) to accept donations of funds and to use such funds to acquire or manage lands or interests therein; and (8) to administer such lands or interests therein for the purposes of sections 757a to 757f of this title. Title to lands or interests therein acquired pursuant to sections 757a to 757f of this title shall be in the United States. (As amended Pub. L. 93–362, § 1, July 30, 1974, 88 Stat. 398.)

AMENDMENTS

1974—Cl. (3). Pub. L. 93–362 inserted reference to the control of the sea lamprey.

§ 757c. Same; prior approval by other Federal departments or agencies of activities on lands administered by such departments or agencies.

Activities authorized by sections 757a to 757f of

[1] So in original.

this title to be performed on lands administered by other Federal departments or agencies shall be carried out only with the prior approval of such departments or agencies. (Pub. L. 89–304, § 3, Oct. 30, 1965, 79 Stat. 1126.)

§ 757d. Same.

(a) Authorization of appropriations.

There is authorized to be appropriated for the period ending on June 30, 1970, not to exceed $25,000,000 to carry out the purposes of sections 757a to 757f of this title. There is authorized to be appropriated to carry out sections 757a to 757f of this title, not to exceed $6,000,000 for the fiscal year ending June 30, 1971, not to exceed $7,500,000 for the fiscal year ending June 30, 1972, not to exceed $8,500,000 for the fiscal year ending June 30, 1973, and not to exceed $20,000,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, June 30, 1978, and June 30, 1979. Sums appropriated under this subsection are authorized to remain available until expended.

(b) Limitation on obligation of funds in any one State.

Not more than $1,000,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State. (Pub. L. 89–304, § 4, Oct. 30, 1965, 79 Stat. 1126; Pub. L. 91–249, § 2, May 14, 1970, 84 Stat. 214.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–362 substituted "$20,000,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, June 30, 1978, and June 30, 1979" for "$10,000,000 for the fiscal year ending June 30, 1974".

§ 757e. Same; Columbia River basin.

Sections 757a to 757f of this title shall not be construed to affect, modify, or apply to the same area as the provisions of sections 755 to 757 of this title. (Pub. L. 89–304, § 5, Oct. 30, 1965, 79 Stat. 1126.)

§ 757f. Same; recommendations to Secretary of Health, Education, and Welfare.

The Secretary of the Interior shall, on the basis of studies carried out pursuant to sections 757a to 757f of this title and section 665 of this title, make recommendations to the Secretary of Health, Education, and Welfare concerning the elimination or reduction of polluting substances detrimental to fish and wildlife in interstate or navigable waters or the tributaries thereof. Such recommendations and any enforcement measures initiated pursuant thereto by the Secretary of Health, Education, and Welfare shall be designed to enhance the quality of such waters, and shall take into consideration all other legitimate uses of such waters. (Pub. L. 89–304, § 6, Oct. 30, 1965, 79 Stat. 1126.)

§ 758. Exploration, investigation, development, and maintenance of fishing resources and industry of Pacific Ocean.

It is the policy of the United States to provide for the exploration, investigation, development, and maintenance of the fishing resources and development of the high seas fishing industry of the United States and its island possessions in the tropical and subtropical Pacific Ocean and intervening seas, for the benefit of the residents of the Pacific island possessions and of the people of the United States. (Aug. 4, 1947, ch. 451, § 1, 61 Stat. 726; July 12, 1960, Pub. L. 86–624, § 11(a, b), 74 Stat. 412.)

AMENDMENTS

1960—Pub. L. 86–624 substituted "the United States and its island possessions" for "the Territories and island possessions of the United States", and eliminated words "Territory of Hawaii and" preceding "Pacific island possessions."

§ 758a. Same; conduct of explorations and related work.

The Secretary of the Interior, through the Fish and Wildlife Service of the Department of the Interior, is authorized and directed to conduct such fishing explorations and such necessary related work as oceanographical, biological, technological, statistical, and economic studies to insure maximum development and utilization of the high seas fishery resources of the United States and its island possessions in the tropical and subtropical Pacific Ocean and intervening areas as may be consistent with developing and sustaining such fishery resources at maximum levels of production in perpetuity and to provide for the best possible utilization thereof. (Aug. 4, 1947, ch. 451, § 2, 61 Stat. 726; July 12, 1960, Pub. L. 86–624, § 11(a), 74 Stat. 412.)

AMENDMENTS

1960—Pub. L. 86–624 substituted "the United States and its island possessions" for "the Territories and island possessions of the United States."

DOGFISH SHARKS: RESEARCH TO CONTROL AND ERADICATE OR TO DISCOVER COMMERCIAL USES

Pub. L. 85–887, Sept. 2, 1958, 72 Stat. 1710, directed the Secretary of the Interior to prosecute, for a period of not to exceed four years from Sept. 2, 1958, investigations of the abundance and distribution of dogfish sharks, experiments to develop control measures, and a vigorous program for the elimination and eradication or development of economic uses of dogfish shark populations.

CENTRAL, WESTERN, AND SOUTH PACIFIC OCEAN FISHERIES RESOURCES DEVELOPMENT PROGRAM

Pub. L. 92–444, Sept. 29, 1972, 86 Stat. 744, provided:

"[SEC. 1. SHORT TITLE]. That this Act may be cited as the 'Central, Western, and South Pacific Fisheries Development Act.'

"SEC. 2. [AUTHORIZATION OF SECRETARY: TUNA AND OTHER FISHERIES RESOURCES DEVELOPMENT PROGRAM; EXPLORATION, ECONOMIC DEVELOPMENT, ETC.]. The Secretary of Commerce (hereafter referred to in this Act as the 'Secretary') is authorized to carry out, directly or by contract, a program for the development of the tuna and other latent fisheries resources of the Central, Western, and South Pacific Ocean. The program shall include, but not be limited to, exploration for, and stock assessment of, tuna and other fish; improvement of harvesting techniques; gear development; biological resource monitoring; and an economic evaluation of the potential for tuna and other fisheries in such area.

"SEC. 3. [CONSULTATION AND COOPERATION OF SECRETARY WITH CERTAIN GOVERNMENTS]. In carrying out the purposes of this Act, the Secretary shall consult, and may otherwise cooperate, with the Secretary of the Interior, the State of Hawaii and other affected States, the governments of American Samoa and Guam, the Office of the High Commissioner of the Trust Territory of the

Pacific Islands, educational institutions, and the commercial fishing industry.

"SEC. 4. [REPORT TO PRESIDENT AND CONGRESS]. The Secretary shall submit to the President and the Congress, not later than January 30 of each year, an annual report with respect to this activities pursuant to this Act, the results of such activities, and any recommendations he may have as a result of such activities.

"SEC. 5. [REGULATIONS; CONTRACT TERMS AND CONDITIONS]. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this Act. Any contract entered into pursuant to section 2 of this Act shall be subject to such terms and conditions as the Secretary deems necessary and appropriate to protect the interests of the United States.

"SEC. 6. [CENTRAL, WESTERN, AND SOUTH PACIFIC AREA]. As used in this Act, the term 'Central, Western, and South Pacific Ocean' means that area of the Pacific Ocean between latitudes 30 degrees north to 30 degrees south and from longitudes 120 degrees east to 130 degrees west.

"SEC. 7. [AUTHORIZATION OF APPROPRIATIONS]. There is authorized to be appropriated for the period beginning July 1, 1973, and ending September 30, 1976, the sum of $3,000,000, and for the period beginning July 1, 1976, and ending September 30, 1979, the sum of $3,000,000, to carry out the purposes of this Act. Sums appropriated pursuant to this section shall remain available until expended."

§ 758b. Same; cooperation with agencies, organizations, and others.

In carrying out the purposes and objectives of sections 758 and 758a of this title, the Secretary of the Interior may cooperate with appropriate agencies of the State and island governments, and with such educational, industrial, or other organizations, enterprises, and individuals as may be expedient. (Aug. 4, 1957, ch. 451, § 3, 61 Stat. 726; July 12, 1960, Pub L. 86–624, § 11(c), 74 Stat. 412.)

AMENDMENTS

1960—Pub. L. 86–624 substituted "State" for "Territorial."

§ 758c. Same; appropriations for research laboratory, experiment stations, dock and storehouse facilities, vessels, etc.; transfer of surplus vessels.

There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary for the construction, including architectural services, and for furnishings and equipment of a fishery research laboratory and experiment station in the State of Hawaii and necessary substations at suitable locations, together with suitable dock and storehouse facilities to be used in conjunction with the operation of research and experimental fishing vessels and for the procurement and for the modification, refitting, and equipment of two experimental high-sea fishing vessels, together with all necessary gear and appurtenances, and of one multiple purpose high-seas fishing and oceanographical research vessel, together with all necessary gear and appurtenances, including necessary naval architectural and engineering services: *Provided, however,* That no part of said appropriation shall be expended for the acquisition of lands for sites for said laboratory, experiment station, or substations in the State of Hawaii: *Provided further,* That there are authorized to be transferred to the Fish and Wildlife Service not to exceed three surplus vessels suitable for conversion and use in oceanographic and biological research and exploratory fishing, by any disposal agency of the Government without reimbursement or transfer of funds. (Aug. 4, 1947, ch. 451, § 4, 61 Stat. 726; July 12, 1960, Pub. L. 86–624, § 11(d), 74 Stat. 412.)

AMENDMENTS

1960—Pub. L. 86–624 substituted "State of Hawaii" for "Hawaiian Islands" and for "Territory of Hawaii."

§ 758d. Same; future appropriations.

There is hereby authorized to be appropriated from time to time in fiscal years after 1947—1948 such sums as may be necessary to enable the Fish and Wildlife Service of the Department of the Interior to carry out the purposes of sections 758 to 758d of this title, including personal services, traveling expenses, transportation of things, purchase, maintenance, and operation of motor vehicles, miscellaneous equipment, and supplies, communications, other contractual services, necessary printing locally, and maintenance, repair, improvement, equipment, and operation of vessels and buildings or other structures. (Aug. 4, 1947, ch. 451, § 6, 61 Stat. 726.)

§ 759. Atlantic Coast shad study; recommendations; per annum cost limitation.

The Secretary of the Interior is authorized to undertake, through the Fish and Wildlife Service, a comprehensive and continuing study of the shad of the Atlantic Coast for the purpose of recommending to the Atlantic Coast States, through the Atlantic States Marine Fisheries Commission, measures to be taken to arrest decline, increase the abundance, and promote the wisest utilization of such shad resources at a cost of not to exceed $75,000 per annum for a six-year period. For the purposes of this section, any agency of the United States, or any corporation wholly owned by the United States, is authorized to transfer, without exchange of funds, any boats or equipment excess to its needs required by the Fish and Wildlife Service for the studies authorized in this section. (Aug. 18, 1949, ch. 478, § 2, 63 Stat. 616.)

§ 760. Establishment of rearing ponds and fish hatchery in Kentucky.

The Secretary of the Interior is authorized to construct, equip, maintain, and operate rearing ponds and a fish hatchery at a suitable location in Kentucky. (July 18, 1950, ch. 465, § 1, 64 Stat. 343.)

§ 760–1. Same; authorization of appropriations.

There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the purposes of section 760 of this title. (July 18, 1950, ch. 465, § 2, 64 Stat. 343.)

§ 760–2. Establishment of fish hatchery in Montana.

The Secretary of the Interior is authorized to establish, construct, equip, operate, and maintain a new fish hatchery in the vicinity of Miles City, Montana. (June 4, 1956, ch. 366, § 1, 70 Stat. 247.)

§ 760–3. Establishment of trout hatchery in Pisgah National Forest.

The Secretary of the Interior, after consulting

with the Secretary of Agriculture, shall establish, construct, equip, operate, and maintain a trout hatchery at an appropriate location on the Davidson River in the Pisgah National Forest, North Carolina. (June 18, 1956, ch. 404, § 1, 70 Stat. 292.)

§ 760–4. Establishment of trout hatchery at Pittsford, Vermont.

The Secretary of the Interior shall develop, reconstruct, equip, operate, and maintain the Federal fish hatchery, known as the Holden trout hatchery, at Pittsford, Vermont, in accordance with the program established by the Fish and Wildlife Service, Department of the Interior, for the improvement of such hatchery. (Aug. 1, 1956, ch. 845, § 1, 70 Stat. 897.)

§ 760–5. Establishment of fish hatchery at Paint Bank, Virginia.

The Secretary of the Interior is authorized and directed to construct, equip, maintain, and operate a new fish hatchery in the vicinity of Paint Bank, Virginia. (Aug. 3, 1956, ch. 943, § 1, 70 Stat. 1020.)

§ 760–6. Same; authorization of appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out section 760–5 of this title. (Aug. 3, 1956, ch. 943, § 2, 70 Stat. 1020.)

§ 760–7. Establishment of fish hatchery in West Virginia.

The Secretary of the Interior is authorized to establish, construct, equip, operate, and maintain a new fish hatchery in the State of West Virginia. (Aug. 6, 1956, ch. 978, § 1, 70 Stat. 1057.)

§ 760–8. Same; authorization of appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of section 760–7 of this title. (Aug. 6, 1956, ch. 978, § 2, 70 Stat. 1057.)

§ 760–9. Establishment of fish hatchery in Pennsylvania.

The Secretary of the Interior is authorized to establish, construct, equip, operate, and maintain a new fish hatchery in the northwestern part of the State of Pennsylvania. (Pub. L. 86–205, § 1, Aug. 25, 1959, 73 Stat. 430.)

§ 760–10. Same; authorization of appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of section 760–9 of this title. (Pub. L. 86–205, § 2, Aug. 25, 1959, 73 Stat. 430.)

§ 760–11. Acceptance and development of fish hatchery in South Carolina.

The Secretary of the Interior is authorized, in his discretion and upon such terms and conditions as he shall consider to be in the public interest, to accept by donation on behalf of the United States, title to the Orangeburg County, South Carolina, fish hatchery, together with the right to take adequate water from Orangeburg County Lake therefor. The Secretary is authorized to rehabilitate and expand the rearing ponds and other hatchery facilities, to purchase lands adjoining such station in connection with the rehabilitation and expansion of such facilities, and to equip, operate, and maintain said fish hatchery. (Pub. L. 86–572, § 1, July 5, 1960, 74 Stat. 311.)

§ 760–12. Same; authorization of appropriations.

There are hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of section 760–11 of this title. (Pub. L. 86–572, § 2, July 5, 1960, 74 Stat. 311.)

§ 760a. Atlantic Coast fish study for development and protection of fish resources.

The Secretary of the Interior is directed to undertake a comprehensive continuing study of species of fish of the Atlantic coast, including bays, sounds, and tributaries, for the purpose of recommending to the States of such coast appropriate measures for the development and protection of such resources and their wisest utilization, whether for sports or commercial fishing or both, including the limitations on season, take per unit of time, per man, or per gear, or such other recommendations as will most effectively provide for the public the maximum production and utilization of such fish consistent with the maintenance of an adequate brood reserve. (Aug. 25, 1950, ch. 782, § 1, 64 Stat. 474.)

§ 760b. Same; cooperation of Federal departments and agencies.

The Secretary is directed to make application through appropriate channels to other Federal departments or agencies for such boats and other equipment in custody of such departments or agencies as may be suitable for studies authorized hereunder, and such Federal departments and agencies are authorized to transfer such boats and other equipment to the Department of the Interior without reimbursement of funds. (Aug. 25, 1950, ch. 782, § 2, 64 Stat. 474.)

§ 760c. Same; authorization of appropriations.

There is authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums, not in excess of $250,000 per annum, as may be necessary to carry out the purposes and objectives of sections 760a to 760c of this title. (Aug. 25, 1950, ch. 782, § 3, 64 Stat. 474.)

§ 760d. Grants for education and training of personnel in the field of commercial fishing; apportionment; authorization of appropriations; regulations.

(a) The Secretary of the Interior is authorized to make grants, out of funds appropriated for the purposes of this section, to public and nonprofit private universities and colleges in the several States and Territories of the United States for such purposes as may be necessary to promote the eduction and training of professionally trained personnel (including scientists, technicians, and teachers) needed in the field of commercial fishing. Any amount appropriated for the purposes of this section shall be apportioned on an equitable basis, as determined by the

Secretary of the Interior, among the several States and Territories for the purpose of making grants within each such State and Territory. In making such apportionment the Secretary of the Interior shall take into account the extent of the fishing industry within each State and Territory as compared with the total fishing industry of the United States (including Territories), and such other factors as may be relevant in view of the purposes of this section.

(b) There are authorized to be appropriated not in excess of $550,000 for the fiscal year beginning on July 1, 1955, and for each fiscal year thereafter for the purposes of this section.

(c) The Secretary of the Interior may establish such regulations as may be necessary to carry out the provisions of this section. (Aug. 8, 1956, ch. 1039, § 1, 70 Stat. 1126.)

§ 760e. Study of migratory game fish; waters; research; purpose.

The Secretary of Commerce is directed to undertake a comprehensive continuing study of the migratory marine fish of interest to recreational fishermen of the United States, including species inhabiting the offshore waters of the United States and species which migrate through or spend a part of their lives in the inshore waters of the United States. The study shall include, but not be limited to, research on migrations, identity of stocks, growth rates, mortality rates, variations in survival, environmental influences, both natural and artificial, including pollution, and effects of fishing on the species, for the purpose of developing wise conservation policies and constructive management activities. (Pub. L. 86–359, § 1, Sept. 22, 1959, 73 Stat. 642; 1970 Reorg. Plan No. 4, § 1(b), eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. 2086.)

§ 760f. Same; authorization to acquire facilities, employ officers and employees, cooperate with State and other agencies, and to publish results.

For the purpose of carrying out the provisions of sections 760e to 760g of this title, the Secretary of Commerce is authorized (1) to acquire lands, construct laboratory or other buildings, purchase boats, acquire such other equipment and apparatus, and to employ such officers and employees as he deems necessary; (2) to cooperate or contract with State and other institutions and agencies upon such terms and conditions as he determines to be appropriate; and (3) to make public the results of such research conducted pursuant to section 760e of this title. (Pub. L. 86–359, § 2, Sept. 22, 1959, 73 Stat. 642; 1970 Reorg. Plan No. 4, § 1(b), eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. 2086.)

§ 760g. Same; authorization of appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 760e to 760g of this title: *Provided,* That no more than $2,700,000 be appropriated for this purpose in any one fiscal year. (Pub. L. 86–359, § 3, Sept. 22, 1959, 73 Stat. 643.)

§ 760h. Shellfisheries research center; establishment; purpose.

The Secretary of the Interior, acting through the cut, a research center for shellfisheries production and for such purpose acquire such real property as may be necessary. Such research center shall consist of research facilities, a pilot hatchery including rearing tanks and ponds, and a training school, and shall be used for the conduct of basic research on the physiology and ecology of commercial shellfish, the development of hatchery methods for cultivation of mollusks, including the development of principles that can be applied to the utilization of artificial and natural salt water ponds for shellfish culture, and to train persons in the most advanced methods of shellfish culture. (Pub. L. 87–173, § 1, Aug. 30, 1961, 75 Stat. 409.)

§ 760i. Same; authorization of appropriations.

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed $1,325,000 to carry out section 760h of this title. (Pub. L. 87–173, § 2, Aug. 30, 1961, 75 Stat. 409.)

§ 760j. Propagation of disease resistant oysters; acquisition of brood stock; transfer and distribution; States to share cost.

The Secretary of the Interior is authorized with respect to those States where he finds that excessive mortality of oysters presents an immediate and substantial threat to the economic stability of the oyster industry in such area or region, to acquire oyster brood stock that he believes possesses resistance to the causative agent of such excessive mortality. The Secretary may thereafter transfer such brood stock to the particular States involved for planting in spawning sanctuaries and protection of such State or States. Distribution of the resultant seed oysters by the States shall be in accordance with plans and procedures that are mutually acceptable to the Secretary and the cooperating States: *Provided,* That the purchase of oyster brood stock hereunder by the Secretary shall be conditional upon the participating State or States, in each instance, paying one-third of the cost of such brood stock. The Secretary of the Interior is authorized to cooperate with the States in any manner necessary to accomplish the purposes of sections 760j to 760*l* of this title. (Pub. L. 87–580, § 1, Aug. 9, 1962, 76 Stat. 356.)

§ 760k. Same; grants to States for research and other necessary activities; conditions.

The Secretary of the Interior is authorized to make grants to the States referred to in section 760j of this title for the purpose of assisting such States in the financing of research and other activities necessary in the development and propagation of disease-resistant strains of oysters. A grant under this section shall be made upon agreement by the State to use the proceeds thereof only for the purposes specified in this section and to use an additional amount for such purposes from State or other non-Federal sources equal to at least 50 per centum of the amount of such grant. (Pub. L. 87–580, § 2, Aug. 9, 1962, 76 Stat. 356.)

§ 760*l*. Same; authorization of appropriations.

There is authorized to be appropriated such sum, not to exceed $100,000, as may be necessary to carry out the provisions of sections 760j to 760*l* of this title. (Pub. L. 87–580, § 3, Aug. 9, 1962, 76 Stat. 357.)

32. Pribilof Islands North Pacific Fur Seals

16 U.S.C. 755–760l

(See Fur Seal Act of 1966 under this title)

33. Reefs for Marine Life Conservation

16 U.S.C. 1220–1220C

Sec.

§ 1220. State applications for Liberty ships for use as offshore reefs.

(a) Conservation of marine life.

Any State may apply to the Secretary of Commerce (hereafter referred to in this chapter as the "Secretary") for Liberty ships which, but for the operation of this chapter, would be designated by the Secretary for scrapping if the State intends to sink such ships for use as an offshore artificial reef for the conservation of marine life.

(b) Manner and form of applications; minimum requirements.

A State shall apply for Liberty ships under this chapter in such manner and form as the Secretary shall prescribe, but such application shall include at least (1) the location at which the State proposes to sink the ships, (2) a certificate from the Administrator, Environmental Protection Agency, that the proposed use of the particular vessel or vessels requested by the State will be compatible with water quality standards and other appropriate environmental protection requirements, and (3) statements and estimates with respect to the conservation goals which are sought to be achieved by use of the ships.

(c) Copies to Federal officers for official comments and views.

Before taking any action with respect to an application submitted under this chapter, the Secretary shall provide copies of the application to the Secretary of the Interior, the Secretary of Defense, and any other appropriate Federal officer, and shall consider comments and views of such officers with respect to the application. (Pub. L. 92–402, § 3, Aug. 22, 1972, 86 Stat. 618.)

§ 1220a. Transfer of title; terms and conditions.

If, after consideration of such comments and views as are received pursuant to section 1220(c) of this title, the Secretary finds that the use of Liberty ships proposed by a State will not violate any Federal law, contribute to degradation of the marine environment, create undue interference with commercial fishing or navigation, and is not frivolous, he shall transfer without consideration to the State all right, title, and interest of the United States in and to any Liberty ships which are available for transfer under this chapter if—

(1) the State gives to the Secretary such assurances as he deems necessary that such ships will be utilized and maintained only for the purposes stated in the application and, when sunk, will be charted and marked as a hazard to navigation;

(2) the State agrees to secure any licenses or permits which may be required under the provisions of any other applicable Federal law;

(3) the State agrees to such other terms and conditions as the Secretary shall require in order to protect the marine environment and other interests of the United States; and

(4) the transfer would be at no cost to the Government with the State taking delivery of such Liberty ships at fleetside of the National Defense Reserve Fleet in an "as is—where is" condition.

(Pub. L. 92–402, § 4, Aug. 22, 1972, 86 Stat. 618.)

§ 1220b. Liberty ships available; number; equitable administration.

A State may apply for more than one Liberty ship under this chapter. The Secretary shall, however, taking into account the number of Liberty ships which may be or become available for transfer under this chapter, administer this chapter in an equitable manner with respect to the various States. (Pub. L. 92–402, § 5, Aug. 22, 1972, 86 Stat. 618.)

§ 1220c. Denial of applications; finality of decision.

A decision by the Secretary denying any application for a Liberty ship under this chapter is final. (Pub. L. 92–402, § 6, Aug. 22, 1972, 86 Stat. 618.)

34. Regulation of Interstate Transportation of Black Bass and Other Fish

16 U.S.C. 851–856

Sec.

§ 851. Definitions.

When used in this chapter the word "person" includes company, partnership, corporation, association, and common carrier, and the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam. (May 20, 1926, ch. 346, § 1, 44 Stat. 576; July 2, 1930, ch. 801, 46 Stat. 845; July 30, 1947, ch. 348, 61 Stat. 517; July 16, 1952, ch. 911, § 1, 66 Stat. 736; Dec. 5, 1969, Pub. L. 91–135, § 9(d), 83 Stat. 282.)

AMENDMENTS

1969—Pub. L. 91–135 defined the term "State".
1952—Act July 16, 1952, omitted definition of game fish.
1947—Act July 30, 1947, added definition of game fish.
1930—Act July 2, 1930, reenacted section without change.

§ 852. Transportation forbidden where law has been violated.

It shall be unlawful for any person—

(1) to deliver or receive for transportation, or to transport, by any means whatsoever, in interstate or foreign commerce, any black bass and other fish, if such person knows or in the exercise of due care should know that (A) such delivery or transportation is contrary to the law of the State or any foreign country from which such black bass or other fish is found or transported, or is contrary to other applicable law, or (B) such black bass or other fish has been either caught, killed, taken, sold, purchased, possessed, or transported, at any time, contrary to the law of the State or foreign country, in which it was caught, killed, taken, sold, purchased, or possessed, or from which it was transported, or contrary to other applicable law;

(2) to purchase or receive any such black bass or other fish, if such person knows, or in the exercise of due care should know, that such bass or fish has been transported in violation of the provisions of this chapter;

(3) receiving any shipment of black bass or other fish transported in interstate or foreign commerce to make any false record or render a false account of the contents of such shipment, if such person knows, or in the exercise of due care should know, that such record or account is false. For the purposes of this section, the provisions of section 10 of Title 18, shall apply to the term "interstate or foreign commerce".

(May 20, 1926, ch. 346, § 2, 44 Stat. 576; July 2, 1930, ch. 801, 46 Stat. 845; July 30, 1947, ch. 348, 61 Stat. 517; July 16, 1952, ch. 911, § 2, 66 Stat. 736; Dec. 5, 1969, Pub. L. 91–135, § 9(a), 83 Stat. 281.)

AMENDMENTS

1969—Pub. L. 91–135 designated existing provisions as pars. (1), (2), and (3), redesignated cls. (1) and (2) as (A) and (B) in par. (1) and proscribed therein conduct contrary to the laws of any foreign country, revised the provisions of the section to clarify the nature of the various violations, also imposed penalties upon a person who in the exercise of due care should know that he is committing one of the enumerated violations, made par (3) applicable to transportation in foreign commerce, and made applicable the definition in section 10 of Title 18 to the term "interstate or foreign commerce".
1952—Act July 16, 1952, substituted "fish" for "game fish" wherever appearing.
1947—Act July 30, 1947, included other game fish in addition to black bass, omitted references to particular species of black bass, and inserted general provisions with reference to acts contrary to other applicable laws.
1930—Act July 2, 1930, amended section generally.

§ 852a. Packages and containers; markings on outside.

Any package or container containing such fish transported or delivered for transportation in interstate commerce or foreign commerce, except any shipment covered by section 855 of this title, shall be clearly and conspicuously marked on the outside thereof with the name "Fish", an accurate statement of the number of each species of such fish contained therein, and the names and addresses of the shipper and consignee. (May 20, 1926, ch. 346, § 3, as added July 2, 1930, ch. 801, 46 Stat. 846, and amended July 30, 1947, ch. 348, 61 Stat. 517; July 16, 1952, ch. 911, § 2, 66 Stat. 736; Dec. 5, 1969, Pub. L. 91–135, § 9(b), 83 Stat. 282.)

AMENDMENTS

1969—Pub. L. 91–135 made the provisions applicable to transportation in foreign commerce.
1952—Act July 16, 1952, substituted "fish" for "game fish" wherever appearing.
1947—Act July 30, 1947, substituted "game fish" for "black bass" and inserted provision as to each species of fish.

§ 852b. Application of State laws on arrival in State; original package.

All such black bass or other fish transported into any State, Territory, or the District of Columbia for use, consumption, sale, or storage therein shall upon arrival in such State, Territory, or the District of Columbia be subject to the operation and effect of the laws of such State, Territory, or the District of Columbia to the same extent and in the same manner as though such fish had been produced in such State, Territory, or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise. (May 20, 1926, ch. 346, § 4, as added July 2, 1930, ch. 801, 46 Stat. 846, and amended July 30, 1947, ch. 348, 61 Stat. 517; July 16, 1952, ch. 911, § 2, 66 Stat. 736.)

AMENDMENTS

1952—Act July 16, 1952, substituted "fish" for "game fish" wherever appearing.
1947—Act July 30, 1947, included other game fish in addition to black bass.

§ 852c. Expenditures; publications; investigations; regulations and their violations.

The Secretary of the Interior is authorized (1) to make such expenditures, including expenditures for personal services at the seat of government and elsewhere, and for cooperation with local, State, and Federal authorities, including the issuance of pub-

lications, and necessary investigations, as may be necessary to execute the functions imposed upon him by this chapter and as may be provided for by Congress from time to time; and (2) to make such regulations as he deems necessary to carry out the purposes of this chapter. Any person violating any such regulation shall be deemed guilty of a violation of this chapter. (May 20, 1926, ch. 346, § 5, as added July 2, 1930, ch. 801, 46 Stat. 846, and amended 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; July 30, 1947, ch. 348, 61 Stat. 517.)

AMENDMENTS

1947—Act July 30, 1947, reenacted section without change.

§ 852d. Arrests without warrant; issuance and execution of warrants and other processes; enforcement personnel; utilization of personnel, services, and facilities of other Federal agencies; searches and seizures; forfeitures.

(a) Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this chapter (1) shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this chapter or any regulation made in pursuance of this chapter, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; (2) shall have power to execute any warrants or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this chapter or regulations made in pursuance thereof; and (3) shall have authority with a search warrant issued by an officer or court of competent jurisdiction, to make search in accordance with the terms of such warrant. Any judge of a court established under the laws of the United States, or any United States commissioner may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. The provisions of this section and any regulations issued thereunder shall be enforced by personnel of the Secretary of the Interior, and he may utilize by agreement, with or without reimbursement, personnel, services, and facilities of other Federal agencies.

(b) All fish delivered for transportation or which have been transported, purchased, received, or which are being transported, in violation of this chapter, or any regulations made pursuant thereto, shall, when found by such employee or by any marshal or deputy marshal, be summarily seized by him and placed in the custody of such persons as the Secretary of the Interior shall by regulations prescribe, and shall, as a part of the penalty and in addition to any fine or imprisonment imposed under section 853 of this title, be forfeited by such court to the United States upon conviction of the offender under this chapter, or upon judgment of the court that the same were transported, delivered, purchased, or received in violation of this chapter or regulations made pursuant thereto. (May 20, 1926, ch. 346, § 6, as added July 2, 1930, ch. 801, 46 Stat. 846, and amended 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; July 30, 1947, ch. 348, 61 Stat. 517; Dec. 5, 1969, Pub. L. 91–135, § 9(c), 83 Stat. 282.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–135 provided for enforcement of this section and regulations thereunder by personnel of the Secretary of the Interior who may utilize, with or without reimbursement, personnel, services, and facilities of other Federal agencies.

1947—Act July 30, 1947, substituted "warrants" for "warrant" in subsec. (a), and made changes in punctuation in both subsections.

§ 853. Penalty.

In addition to any forfeiture provided in this chapter, any person who shall violate any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not exceeding $200, or imprisonment for a term of not more than three months, or by both such fine and imprisonment, in the discretion of the court. (May 20, 1926, ch. 346, § 7, as added July 2, 1930, ch. 801, 46 Stat. 847, and amended July 30, 1947, ch. 348, 61 Stat. 517.)

AMENDMENTS

1947—Act July 30, 1947, reenacted section without change.

§ 854. Effect on power of States.

Nothing in this chapter shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of this chapter, or from making or enforcing laws or regulations which shall give further protection to black bass and other fish. (May 20, 1926, ch. 346, § 8, as added July 2, 1930, ch. 801, 46 Stat. 847, and amended July 30, 1947, ch. 348, 61 Stat. 517; July 16, 1952, ch. 911, § 2, 66 Stat. 736.)

AMENDMENTS

1952—Act July 16, 1952, substituted "fish" for "game fish" wherever appearing.

1947—Act July 30, 1947, omitted reference to particular species of black bass, and included other game fish in addition to black bass.

§ 855. Effect on shipments for breeding or stocking.

Nothing in this chapter shall be construed to prevent the shipment in interstate commerce of any fish or eggs for breeding or stocking purposes if they were caught, taken, sold, purchased, possessed, or transported in accordance with the law of the State, the District of Columbia, or Territory in which they were caught, taken, sold, purchased, possessed, or transported. (May 20, 1926, ch. 346, § 9, as added July 2, 1930, ch. 801, 46 Stat. 847, and amended July 30, 1947, ch. 348, 61 Stat. 517; Aug. 25, 1959, Pub. L. 86–207, 73 Stat. 430.)

AMENDMENTS

1959—Pub. L. 86–207 substituted "any fish or eggs" for "live fish and eggs" and added the conditional clause.

1947—Act July 30, 1947, reenacted section without change.

§ 856. Steelhead trout of Columbia River not included.

The provisions of this chapter as relating to fish shall not apply to steelhead trout (salmo gairderii) legally taken in the Columbia River between the States of Washington and Oregon. (May 20, 1926,

ch. 346, § 10, as added July 30, 1947, ch. 348, 61 Stat. 517, and amended July 16, 1952, ch. 911, § 2, 66 Stat. 736.)

AMENDMENTS

1952—Act July 16, 1952, substituted "fish" for "game fish" wherever appearing.

35. Regulation of Sponge Industry

16 U.S.C. 781–785

Sec.
781. Taking or catching, in waters of Gulf or Straits of Florida, commercial sponges of less than prescribed size, and landing or possession of same.
782. Same; possession prima facie evidence.
783. Punishment for violations of law; liability of vessels
784. Jurisdiction of prosecutions.
785. Enforcement of law prohibiting taking of sponges of specified sizes; employment of Coast Guard vessels and Customs Service employees.

§ 781. Taking or catching, in waters of Gulf or Straits of Florida, commercial sponges of less than prescribed size, and landing or possession of same.

It is unlawful for any citizen of the United States, or person owing duty of obedience to the laws of the United States, or any boat or vessel of the United States, or person belonging to or on any such boat or vessel, to take or catch, by any means or method, in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, any commercial sponges measuring when wet less than five inches in their maximum diameter, or for any person or vessel to land, deliver, cure, offer for sale, or have in possession at any port or place in the United States, or on any boat or vessel of the United States, any such commercial sponges. (Aug. 15, 1914, ch. 253; § 1, 38 Stat. 692.)

§ 782. Same; possession prima facie evidence.

The presence of sponges of a diameter of less than five inches on any vessel or boat of the United States engaged in sponging in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, or the possession of any sponges of less than the said diameter sold or delivered by such vessels, shall be prima facie evidence of a violation of the provisions of this chapter. (Aug. 15, 1914, ch. 253, § 2, 38 Stat. 692.)

§ 783. Punishment for violations of law; liability of vessels.

Every person, partnership, or association guilty of a violation of the provisions of this chapter shall be liable to a fine of not more than $500, and in addition such fine shall be a lien against the vessel or boat on which the offense is committed, and said vessel or boat shall be seized and proceeded against by process of libel in any court having jurisdiction of the offense. (Aug. 15, 1914, ch. 253, § 3, 38 Stat. 692.)

§ 784. Jurisdiction of prosecutions.

Any violation of the provisions of this chapter shall be prosecuted in the district court of the United States of the district wherein the offender is found or into which he is first brought. (Aug. 15, 1914, ch. 253, § 4, 38 Stat. 692.)

§ 785. Enforcement of law prohibiting taking of sponges of specified sizes; employment of Coast Guard vessels and Customs Service employees.

The Secretary of the Interior shall enforce the provisions of this chapter, and he is authorized to empower such officers and employees of the Department of the Interior as he may designate, or such officers and employees of other departments as may be detailed for the purpose, to make arrests and seize vessels and sponges, and upon his request the Secretary of the Treasury may employ the vessels of the Coast Guard or the employees of the Customs Service to that end. (Aug. 15, 1914, ch. 253, § 5, 38 Stat. 692; 1939 Reorg. Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; Aug. 4, 1949, ch. 393, §§ 1, 20, 63 Stat. 495, 561.)

AMENDMENTS

1949—Act Aug. 4, 1949, reestablished the Coast Guard and repealed act Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800.

36. Sea Otters—Protection on High Seas

16 U.S.C. 1171–1172

(See Fur Seal Act of 1966 of this title)

37. Sockeye Salmon or Pink Salmon Fishing Act of 1947

16 U.S.C. 776–776f

Sec.
776. Definitions.
776a. Unlawful acts.
776b. Omission of or fraudulent returns, records, and reports; penalties.
776c. Penalties and forfeitures.
(a) Fine and imprisonment; prohibition on activities.
(b) Forfeitures; first and subsequent violations.
(c) Same; procedure.
(d) Minor violations; citation to appear.
(e) Bond or stipulation.
776d. Enforcement.

§ 776. Definitions.

When used in this chapter—

(a) Convention: The word "convention" means the convention between the United States of America and the Dominion of Canada for the protection, preservation, and extension of the sockeye salmon fisheries of the Fraser River system, signed at Washington on the 26th day of May 1930, as amended by the protocol to the convention, signed at Ottawa on the 28th day of December 1956.

(b) Commission: The word "Commission" means the International Pacific Salmon Fisheries Commission provided for by article II of the convention.

(c) Person: The word "person" includes individuals, partnerships, associations, and corporations.

(d) Convention waters: The term "convention waters" means those waters described in article I of the convention.

(e) Sockeye salmon and pink salmon: The term "sockeye salmon" means that species of salmon known by the scientific name Oncorhynchus nerka, and the term "pink salmon" means that species of salmon known by the scientific name Oncorhynchus gorbuscha.

(f) Vessel: The word "vessel" includes every type or description of water craft or other contrivance used, or capable of being used, as a means of transportation in water.

(g) Fishing: The word "fishing" means the fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye salmon or pink salmon in convention waters.

(h) Fishing gear: The term "fishing gear" means any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used, for the purpose of capturing fish or as an aid in capturing fish. (July 29, 1947, ch. 345, § 2, 61 Stat. 511; July 11, 1957, Pub. L. 85–102, §§ 1—3, 71 Stat. 293.)

AMENDMENTS

1957—Subsec. (a). Pub. L. 85–102, § 1, substituted the word "fisheries" for "fishery" and inserted, "as amended by the protocol to the convention, signed at Ottawa on the 28th day of December 1956".

Subsec. (e). Pub. L. 85–102, § 2, added definition of "pink salmon".

Subsec. (g). Pub. L. 85–102, § 3, inserted the words "or pink salmon".

§ 776a. Unlawful acts.

(a) It shall be unlawful for any person to engage in fishing for sockeye salmon or pink salmon in convention waters in violation of the convention or of this chapter or of any regulation of the Commission.

(b) It shall be unlawful for any person to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any sockeye salmon or pink salmon taken in violation of the convention or of this chapter or of any regulation of the Commission.

(c) It shall be unlawful for any person or vessel to use any port or harbor or other place subject to the jurisdiction of the United States for any purpose connected in any way with fishing in violation of the convention or of this chapter or of any regulation made by the Commission.

(d) It shall be unlawful for any person or vessel to engage in fishing for sockeye salmon or pink salmon in convention waters without first having obtained such license or licenses as may be used by or required by the Commission, or to fail to produce such license, upon demand, for inspection by an authorized enforcement officer.

(e) It shall be unlawful for any person to fail to make, keep, submit, or furnish any record or report required of him by the Commission or to refuse to permit any officer authorized to enforce the convention, this chapter, and the regulations of the Commission, or any authorized representative of the Commission, to inspect any such record or report at any reasonable time.

(f) It shall be unlawful for any person to molest, interfere with, tamper with, damage, or destroy any boat, net, equipment, stores, provisions, fish-cultural stations, rearing pond, weir, fishway, or any other structure, installation, experiment, property, or facility acquired, constructed, or maintained by the Commission.

(g) It shall be unlawful for any person or vessel to do any act prohibited or to fail to do any act required by the convention or by this chapter or by any regulation of the Commission. (July 29, 1947, ch. 345, § 3, 61 Stat. 511; July 11, 1957, Pub. L. 85–102, § 3, 71 Stat. 294.)

AMENDMENTS

1957—Subsecs. (a), (b), and (d). Pub. L. 85–102 inserted the words "or pink salmon".

§ 776b. Omission of or fraudulent returns, records, and reports; penalties.

Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the Commission, or any person who furnishes a false return, record, or report, upon conviction shall be subject to such fine as may be imposed by the court not to exceed $1,000, and shall in addition be prohibited from fishing for and from shipping, transporting, purchasing, selling, offering for sale, importing, exporting, or possessing sockeye salmon or pink salmon from the date of conviction until such time as any delinquent return, record, or report shall have been submitted or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 776c of this title shall not be invoked for failure to comply with requirements respecting returns, records, and reports. (July 29, 1947, ch. 345, § 4, 61 Stat. 512; July 11, 1957, Pub. L. 85–102, § 3, 71 Stat. 294.)

AMENDMENTS

1957—Pub. L. 85–102 inserted the words "or pink salmon".

§ 776c. Penalties and forfeitures.

(a) Fine and imprisonment; prohibition on activities.

Except as provided in section 776b of this title, any person violating any provision of the convention or of this chapter or the regulation of the Commission upon conviction shall be fined not more than $1,000 or be imprisoned not more than one year, or both, and the court may prohibit such person from fishing for, or from shipping, transporting, purchasing, selling, offering for sale, importing, exporting, or possessing sockeye salmon or pink salmon for such period of time as it may determine.

(b) Forfeitures; first and subsequent violations.

The catch of fish of every vessel or of any fishing gear employed in any manner, or any fish caught, shipped, transported, purchased, sold, offered for sale, imported, exported, or possessed in violation of this chapter or the regulations of the Commission shall be forfeited; and upon a second and subsequent violation the catch of fish shall be forfeited and every such vessel and any fishing gear and appurtenances involved in the violation may be forfeited.

(c) Same; procedure.

All procedures of law relating to the seizure, judicial forfeiture, and condemnation of a vessel for violation of the customs laws and the disposition of such vessel or the proceeds from the sale thereof shall apply to seizures, forfeitures, and condemnations incurred, or alleged to have been incurred, under the provisions of this chapter insofar as such provisions of law are applicable and not inconsistent with this chapter.

(d) Minor violations; citation to appear.

In cases of minor violations of the provisions of the convention or of this chapter or the regulations of the Commission, and in cases where immediate arrest of the person or seizure of fish, fishing gear, or of a vessel, together with its tackle, apparel, furniture, appurtenances, and cargo, would impose an unreasonable hardship, the person authorized to make such arrest or seizure or any court of competent jurisdiction may, in his or its discretion, issue a citation requiring such person to appear before the proper official of the court having jurisdiction thereof within a specified time, not exceeding fifteen days; or in the case of property, post such citation upon said property and require its delivery to such court within such specified time. Upon the issuance of such citation and the filing of a copy thereof with the clerk of the appropriate court the person so cited and the property so seized and posted shall thereupon be subject to the jurisdiction of the court to answer the order of the court in such cause. Any property so seized shall not be disposed of except pursuant to the order of such court or the provisions of subsection (e) of this section.

(e) Bond or stipulation.

When a warrant of arrest or other process in rem, including that specified in subsection d) of this section, is issued in any cause of admiralty jurisdiction under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation with sufficient sureties or approved corporate surety in such sum as the court shall order, conditioned to deliver the property seized, if condemned, without impairment in value (or, in the case of sockeye salmon or pink salmon, to pay its equivalent in money) or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in the event of any breach of the conditions thereof as determined by the court. (July 29, 1947, ch. 345, § 5, 61 Stat. 512; July 11, 1957, Pub. L. 85–102, § 3, 71 Stat. 294.)

AMENDMENTS

1957—Subsecs. (a) and (e). Pub. L. 85–102 inserted the words "or pink salmon".

§ 776d. Enforcement.

(a) Designation of Federal agency; cooperation with State and Dominion officers.

The President of the United States shall designate a Federal agency which shall be responsible for the enforcement of the provisions of the convention and this chapter and the regulations of the Commission, except to the extent otherwise provided for in the convention and this chapter. It shall be the duty of the Federal agency so designated to take appropriate measures for enforcement at such times and to such extent as it may deem necessary to insure effective enforcement and for this purpose to cooperate with other Federal agencies, State officers, the Commission, and with the authorized officers of the Dominion of Canada.

(b) Authorization to State officers.

The Federal agency designated by the President for enforcement purposes may authorize officers and employees of the State of Washington to enforce the provisions of the convention and of this chapter and the regulations of the Commission. When so authorized such officers may function as Federal law-enforcement officers for the purposes of this chapter.

(c) Conformity to convention article.

Enforcement of the convention and this chapter and the regulations of the Commission shall be subject to and in accordance with the provisions of article IX of the convention.

(d) Arrests, searches, and seizures.

Any duly authorized officer or employee of the Federal agency designated by the President for enforcement purposes under the provisions of subsection (a) of this section; any officer or employee of the State of Washington who is authorized by the Federal agency so designated by the President; any enforcement officer of the Fish and Wildlife Service of the Department of the Interior, any Coast Guard officer, any United States marshal or deputy United States marshal, any collector or deputy collector of customs, and any other person authorized to enforce the provisions of the convention, this chapter, and the regulations of the Commission, shall have power, without warrant or other process, but subject to the provisions of the convention, to arrest any person committing in his presence or view a violation of the convention or of this chapter or of the regulations of the Commission and to take such person imme-

diately for examination before an officer or trial before a court of competent jurisdiction; and shall have power, without warrant or other process, to search any vessel within convention waters when he has reasonable cause to believe that such vessel is subject to seizure under the provisions of the convention or this chapter, or the regulations of the Commission, and to search any place of business or any commercial vehicle when he has reasonable cause to believe that such place or vehicle contains fish taken, possessed, transported, purchased, or sold in violation of any of the provisions of the convention, this chapter, or the regulations of the Commission. Any person authorized to enforce the provisions of the convention and of this chapter and the regulations of the Commission shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this chapter, and shall have power with a search warrant to search any person, vessel, or place, at any time. The judges of the United States courts and the United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to the provisions of the convention, any person authorized to enforce the convention and this chapter and the regulations of the Commission may seize, whenever and wherever lawfully found, all fish caught, shipped, transported purchased, sold, offered for sale, imported, exported, or possessed contrary to the provisions of the convention or this chapter or the regulations of the Commission and may seize any vessel, together with its tackle, apparel, furniture, appurtenances and cargo, and all fishing gear, used or employed contrary to the provisions of the convention or this chapter or the regulations of the Commission, or which it reasonably appears has been used or employed contrary to the provisions of the convention or this chapter or the regulations of the Commission.

(e) Evidence.

Evidence of any regulation made by the Commission may be given in any court proceedings by the production of a copy of such regulation certified by the Secretary of the Commission to be a true copy and no proof of the signature of the Secretary on such certification shall be required.

(f) Inspection of licenses.

Any authorized representative of the Commission, or any person authorized to enforce this chapter and the regulations of the Commission may inspect any licenses issued to persons or vessels engaging in fishing for sockeye salmon or pink salmon in convention waters and for this purpose may at any reasonable time board any vessel or enter upon any premises where such fishing is or may be conducted. (July 29, 1947, ch. 345, § 6, 61 Stat. 513; July 11, 1957, Pub. L. 85–102, § 3, 71 Stat. 294.)

AMENDMENTS

1957—Subsec. (f). Pub. L. 85–102 inserted the words "or pink salmon".

§ 776e. Cooperation of Federal agencies; conduct of scientific investigations.

(a) All agencies of the Federal Government are authorized, upon request by the Commission, to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties of scientific investigation and improvement of the fisheries, as specified in the convention.

(b) None of the prohibitions contained in this chapter, or in the laws and regulations of the States, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the convention. (July 29, 1947, ch. 345, § 7, 61 Stat. 514; July 11, 1957, Pub. L. 85–102, § 4, 71 Stat. 294.)

AMENDMENTS

1957—Subsec. (a). Pub. L. 85–102 substituted the word "fisheries" for "fishery".

§ 776f. Appropriations.

(a) There is authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums, from time to time, as may be necessary to enable the Commission and agencies of the Federal Government to carry out the provisions of the convention and of this chapter, including purchase, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats, research vessels, and other necessary facilities; and printing.

(b) In addition to the amounts authorized in subsection (a) of this section, there is authorized to be appropriated the sum of $7,000,000 for the share of the United States of costs and expenses incident to the development and construction of salmon enhancement facilities pursuant to the program for the restoration and extension of the sockeye and pink salmon stocks of the Fraser River system as approved by the Commission, to remain available until expended. (As amended Oct. 18, 1972, Pub. L. 92–504, 86 Stat. 907.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–504 designated existing provisions as subsec. (a) and added subsec. (b).

38. State Commercial Fisheries Research and Development Projects

16 U.S.C. 779–779f

Sec.

§ 779. Definitions.

As used in this chapter, the term—

"Commercial fisheries" means any organization, individual, or group of organizations or individuals engaged in the harvesting, catching, processing, distribution, or sale of fish, shellfish, or fish products.

"Fiscal year" means the period beginning July 1 and ending June 30.

"Obligated" means the written approval by the Secretary of the Interior of a project submitted by the State agency pursuant to this chapter.

"Project" means the program of research and development of the commercial fishery resources, including the construction of facilities by the States for the purposes of carrying out the provisions of this chapter.

"Raw fish" means aquatic plants and animals.

"State" means the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"State agency" means any department, agency, commission, or official of a State authorized under its laws to regulate commercial fisheries. (Pub. L. 88–309, § 2, May 20, 1964, 78 Stat. 197; amended Pub. L. 94–485, § 1(1), Oct. 12, 1976, 90 Stat. 2326.)

AMENDMENT

1976—Sec. 1(1) of Pub. L. 94–485 added "the Trust Territory of the Pacific Islands" to the definition of "State."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–485 provided that amendments made by Sec. 1 would be effective October 1, 1976.

§ 779a. Cooperation with States on projects; use of funds; joint projects between states; consent to interstate compacts; reservation of right to alter, amend or repeal consent.

(a) The purpose of this chapter is to authorize the Secretary of the Interior to cooperate with the States through their respective State agencies in carrying out projects designed for the research and development of the commercial fisheries resources of the Nation. Federal funds made available under this chapter will be used to supplement, and, to the extent practicable, increase the amounts of State funds that would be made available for commercial fisheries research and development in the absence of these Federal funds.

(b)(1) Nothing in this chapter prevents any two or more States from acting jointly in carrying out a project.

(2) The Congress consents to any compact or agreement between any two or more States for the purpose of carrying out a project. The right to alter, amend, or repeal this subsection or the consent granted under this subsection is expressly reserved. (Pub. L. 88–309, § 3, May 20, 1964, 78 Stat. 197.)

§ 779b. Authorization of appropriations.

(a) There is authorized to be appropriated to the Secretary of the Interior for the fiscal year beginning July 1, 1973, and for the four succeeding fiscal years, $5,000,000 in each year for apportionment to the States to carry out the purposes of this chapter.

(b) In addition to the amounts authorized in subsection (a) of this section there is authorized to be appropriated for the fiscal year beginning July 1, 1973, and for the four succeeding fiscal years, $1,500,000 in each such year, which shall be made available to the States in such amounts as the Secretary may determine appropriate for the purposes of this chapter: *Provided*, That the Secretary shall give a preference to those States in which he determines there is a commercial fishery failure due to a resource disaster arising from natural or undetermined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such failure or to prevent a similar failure in the future: *Provided further*, That the funds authorized to be appropriated under this subsection shall not be available to the Secretary for use as grants for chartering fishing vessels. Amounts appropriated pursuant to this subsection shall remain available until expended.

(c) In addition to the funds authorized in subsections (a) and (b) of this section, there is authorized to be appropriated $100,000 for the fiscal year beginning July 1, 1973, and for each succeeding fiscal year during the term of this chapter, which shall be made available to the States in such amounts as the Secretary may determine for developing a new commercial fishery therein. (As amended Pub. L. 92–590, §§ 1–3, Oct. 27, 1972, 86 Stat. 1303.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–590 substituted provisions authorizing appropriations for the fiscal year beginning July 1, 1973, and for the four succeeding years, for provisions authorizing such appropriations for the fiscal year beginning July 1, 1969, and for the three succeeding fiscal years.

Subsec. (b). Pub. L. 92–590 substituted provisions authorizing the appropriation of $1,500,000 for the fiscal year beginning July 1, 1973 and for each of the succeeding four fiscal years, for provisions authorizing appropriation of $650,000 for the fiscal year beginning July 1, 1969, and for the three succeeding fiscal years.

Subsec. (c). Pub. L. 92–590 substituted "for the fiscal year beginning July 1, 1973" for "for the fiscal year beginning July 1, 1969".

§ 779c. Apportionment of funds among States; basis; minimum apportionment; carryover of unobligated funds.

(a) Funds appropriated pursuant to section 779b(a) of this title shall be apportioned among the States, by the Secretary, on October 1 of each year

or as soon as practicable thereafter, on a basis determined by the ratio which the average of the value of raw fish harvested by domestic commercial fishermen and received within the State (regardless where caught) for the three most recent calendar years for which data satisfactory to the Secretary are available plus the average of the value to the manufacturer of manufactured and processed fishery merchandise manufactured within each State for the three most recent calendar years for which data satisfactory to the Secretary are available, bears to the total average value of all raw fish harvested by domestic commercial fishermen and received within the States (regardless when caught) and fishery merchandise manufactured and processed within the States for the three most recent calendar years for which data satisfactory to the Secretary are available. However, no State may receive an initial apportionment for any fiscal year of less than one-half of 1 per centum of funds or more than 6 per centum of the funds.

(b)(1) Except as provided in paragraph (2) of this subsection, so much of any apportionment for any fiscal year to any State which is not obligated during such year remains available for obligation to that State to carry out the purposes of this Act until the close of the succeeding fiscal year, and, wish to receive all or any part of any funds shall not be considered thereafter to be apportioned to that State and shall remain available until expended to carry out the purposes of this Act as determined by the Secretary without regard to any provision of subsection (a) of this section.

(2) If any State—

(A) notifies the Secretary that it does not wish to receive all or any part of any funds apportioned to it for any fiscal year pursuant to subsection (a) of this section, or

(B) returns to the Secretary funds received by it pursuant to any apportionment pursuant to such subsection (a),

such funds shall not be considered to be apportioned to that State and shall immediately be available, and remain available until expended, to carry out the purposes of this Act as determined by the Secretary without regard to any provision of such subsection (a). Any notification or return of funds made by any State pursuant to this paragraph is irrevocable.

(Pub. L. 88–309, § 5, May 20, 1964, 78 Stat. 1980; amended Pub. L. 94–485, § 1(2) and (3), Oct. 12, 1976, 90 Stat. 2326.)

AMENDMENT

1976—Sec. 1(3) of Pub. L. 94–485 revised subsec. (b) of Sec. 779c.

§ 779d. Plans.

(a) Submission by States; notification of approval; approval prerequisite to obligation of appropriations and expenditure of funds.

Any State desiring to avail itself of the benefits of this chapter may, through its State agency, submit to the Secretary full plans, specifications, and estimates of any project proposed for that State. Items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed shall not exceed 10 per centum of the cost of the works, and shall be paid by the State as a part of its contribution to the total cost of the works. If the Secretary approves the plans, specifications, and estimates as being consistent with the purposes of this chapter and in accordance with standards to be established by him, he shall notify the State agency. No part of any moneys appropriated pursuant to this chapter may be obligated with respect to any project until the plans, specifications, and estimates have been submitted to and approved by the Secretary. The expenditure of funds authorized by this chapter shall be applied only to approved projects, and if otherwise applied they shall be replaced by the State before it may participate in any further assistance under this chapter

(b) Approval; notice; allocation of appropriations; limitation on amount.

If the Secretary approves the plans, specifications, and estimates for the project, he shall promptly notify the State agency and immediately set aside so much of the appropriation made available under section 779b(a) of this title as represents the Federal share payable under this chapter on account of the project, which sum shall not exceed 75 per centum of the total estimated cost of the project.

(c) Payment to proper authority; progress payments.

When the Secretary determines that a project approved by him had been completed, or where he otherwise deems it appropriate, he shall cause to be paid to the proper authority of the State, the Federal share of the project. All payments shall be made to the official or depository, as may be designated by the State agency and authorized under the laws of the State to receive public funds of the State. (Pub. L. 88–309, § 6, May 20, 1964, 78 Stat. 198; amended Pub. L. 94–485, § 1(4), Oct. 12, 1976, 90 Stat. 2326.)

AMENDMENTS

1976—Sec. 1(4)(A) of Pub. L. 94–485 added the words "or where he otherwise deems it appropriate," to Sec. 779d(c).

Sec. 1(4)(B) deleted the second and third sentences of Sec. 779d(c).

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 2 of Pub. L. 94–485 provided that amendments made by Sec. 1 would be effective October 1, 1976.

§ 779e. Working conditions.

(a) Laws governing; supervision by State agency; regulations of the Secretary; title to property.

All work, including the furnishing of labor and materials, needed to complete any project approved by the Secretary shall be performed in accordance with applicable Federal and State laws under the direct supervision of the State agency, and in accordance with regulations as the Secretary may prescribe. Title to all property, real and personal, ac-

quired for the purposes of completing any project approved by the Secretary, vests in the State.

(b) Pay rates.

All laborers and mechanics employed by contractors or subcontractors on all construction projects assisted under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, and shall receive overtime pay in accordance with and subject to the provisions of the Contract Work Hours Standards Act. The Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40.

(c) Property disposal.

If a State disposes of any real or personal property acquired under this chapter, the State shall pay into the Treasury of the United States the amount of any proceeds resulting from the property disposal to the extent of and in the same ratio that funds provided by this chapter were used in the acquisition of the property. In no case shall the amount paid into the Treasury of the United States under this section exceed the amount of funds provided by this chapter for the acquisition of the property involved. (Pub. L. 88–309, § 7, May 20, 1964, 78 Stat. 199.)

§ 779f. Rules and regulations.

The Secretary is authorized to make such rules and regulations as he determines necessary to carry out the purposes of this chapter. (Pub. L. 88–309, § 8, May 20, 1964, 78 Stat. 199.)

39. Tuna Conventions Act of 1950

16 U.S.C. 951–961

Sec.

§ 951. Definitions.

As used in this chapter, the term—

(a) "convention" includes (1) the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City, January 25, 1949, by the United States of America and the United Mexican States, (2) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington May 31, 1949, by the United States of America and the Republic of Costa Rica, or both such conventions, as the context requires;

(b) "commission" includes (1) the International Commission for the Scientific Investigation of Tuna, (2) the Inter-American Tropical Tuna Commission provided for by the conventions referred to in subsection (a) of this section, or both such commissions, as the context requires;

(c) "United States Commissioners" means the members of the commissions referred to in subsection (b) of this section representing the United States of America and appointed pursuant to the terms of the pertinent convention and section 952 of this title;

(d) "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States; and

(e) "United States" shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone. (Sept. 7, 1950, ch. 907, § 2, 64 Stat. 777; Oct. 15, 1962, Pub. L. 87–814, § 1, 76 Stat. 923.)

AMENDMENTS

1962—Subsec. (e). Pub. L. 87–814 substituted definition of "United States" for definition of "enforcement agency."

§ 952. Commissioners; number, appointment, and qualification.

The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Of such Commissioners—

(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;

(b) at least one of the Commissioners who are such legal residents shall be a person chosen from the public at large, and who is not a salaried employee of a State or of the Federal Government; and

(c) at least one shall be an officer of the United States Fish and Wildlife Service. (Sept. 7, 1950, ch. 907, § 3, 64 Stat. 777.)

§ 953. Advisory Committee; composition; appointment; compensation; duties.

The United States Commissioners shall (a) appoint an advisory committee which shall be com-

posed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions. (Sept. 7, 1950, ch. 907, § 4, 64 Stat. 778.)

§ 954. Repealed. Pub. L. 92–471, title II, § 203(b), Oct. 9, 1972, 86 Stat. 787.

Section, act Sept. 7, 1950, ch. 907, § 5, 64 Stat. 778, provided that service of individuals appointed as United States Commissioners shall not be treated as service for the purposes of certain sections of Title 18, Crimes and Criminal Procedure and Title 5, Government Organization and Employees.

§ 955. Secretary of State to act for United States; regulations; rulemaking procedure; prohibitions.

(a) The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws and rules, or amendments thereof, adopted by each commission and submitted for approval of the United States Government in accordance with the provisions of the conventions, and, with the concurrence of the Secretary of the Interior, to approve or disapprove the general annual programs of the commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.

(b) Regulations recommended by each commission pursuant to the convention requiring the submission to the commission of records of operations by boat captains or other persons who participate in the fisheries covered by the convention, upon the concurrent approval of the Secretary of State and the Secretary of the Interior, shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States.

(c) Regulations required to carry out recommendations of the commission made pursuant to paragraph 5 of article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission shall be promulgated as hereinafter provided by the Secretary of the Interior upon approval of such recommendations by the Secretary of State and the Secretary of the Interior. The Secretary of the Interior shall cause to be published in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (1) submission of written data, views, or arguments, and (2) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations. After publication in the Federal Register such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary of the Interior shall prescribe, but in no event prior to an agreed date for the application by all countries whose vessels engage in fishing for species covered by the convention in the regulatory area on a meaningful scale, in terms of effect upon the success of the conservation program, of effective measures for the implementation of the commission's recommendations applicable to all vessels and persons subject to their respective jurisdictions. The Secretary of the Interior shall suspend at any time the application of any such regulations when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations. The regulations thus promulgated may include the selection for regulation of one or more of the species covered by the convention; the division of the convention waters into areas; the establishment of one or more open or closed seasons as to each area; the limitation of the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed; the limitation or prohibition of the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish; the requiring of such clearance certificates for vessels as may be necessary to carry out the purposes of the convention and this chapter; and such other measures incidental thereto as the Secretary of the Interior may deem necessary to implement the recommendations of the commission: *Provided*, That upon the promulgation of any such regulations the Secretary of the Interior shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to (1) to prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area; and (2) to prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission. In the case of repeated and flagrant fishing operations in the regu-

latory area by the vessels of any country which seriously threaten the achievement of the objectives of the commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of the Interior is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry. (Sept. 7, 1950, ch. 907, § 6, 64 Stat. 778; Oct. 15, 1962, Pub. L. 87–814, § 2, 76 Stat. 923.)

AMENDMENTS

1962—Subsecs. (a), (b). Pub. L. 87–814 substituted "Secretary of the Interior" for "head of the enforcement agency."

Subsec. (c). Pub. L. 87–814 added subsec. (c).

§ 956. Inspection of returns, records, or other reports.

Any person authorized to carry out enforcement activities under this chapter and any person authorized by the commissions shall have power without warrant or other process, to inspect, at any reasonable time, catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished. (Sept. 7, 1950, ch. 907, § 7, 64 Stat. 778; Oct. 15, 1962, Pub. L. 87–814, § 3, 76 Stat. 924).

AMENDMENTS

1962—Pub. L. 87–814 substituted provisions respecting inspection of returns, records, or other reports for provisions authorizing a fine not exceeding $1,000 and proceedings for injunction against fishing for or possessing the kind of fish covered by the convention for failure to make, keep, furnish, or refusal to permit inspection of returns, records, or reports or for furnishing a false return, record, or report.

§ 957. Violations; fines and forfeitures; application of related laws.

(a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to section 955(c) of this title or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to board such vessel or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this chapter, or the convention, as the case may be.

(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 955(c) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna in any form not under regulation but under investigation by the commission, during the period such fish have been denied entry in accordance with the provisions of section 955(c) of this title. In the case of any fish as described in this subsection offered for entry into the United States, the Secretary of the Interior shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 955(c) of this title.

(d) Any person violating any provisions of subsection (a) of this section shall be fined not more than $25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than $50,000.

(e) Any person violating any provision of subsection (b) of this section shall be fined not more than $1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than $5,000.

(f) Any person violating any provision of subsection (c) of this section shall be fined not more than $100,000.

(g) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(h) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter. (Sept. 7, 1950, ch. 907, § 8, 64 Stat. 779; Oct. 15, 1962, Pub. L. 87–814, § 4, 76 Stat. 924.)

AMENDMENTS

1962—Pub. L. 87–814 substituted provisions respecting violations, fines, and forfeitures, and application of related laws for provisions respecting enforcement of chapter.

§ 958. Cooperation with other agencies.

(a) In order to provide coordination between the general annual programs of the commissions and programs of other agencies, relating to the exploration, development, and conservation of fishery resources, the Secretary of State may recommend to the United States Commissioners that they consider the relationship of the commissions' programs to those of such agencies and when necessary arrange, with the concurrence of such agencies, for mutual cooperation between the commissions and such agencies for carrying out their respective programs.

(b) All agencies of the Federal Government are authorized on request of the commissions to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the commissions in the performance of their duties.

(c) The commissions are authorized and empowered to supply facilities and personnel to existing non-Federal agencies to expedite research work which in the judgment of the commissions is contributing or will contribute directly to the purposes of the conventions. (Sept. 7, 1950, ch. 907, § 9, 64 Stat. 779.)

§ 959. Enforcement of chapter.

(a) Issuance of process.

The judges of the United States district courts and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and the regulations issued pursuant thereto.

(b) Federal law enforcement agents.

Enforcement of the provisions of this chapter and the regulations issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of the Interior, and the United States Bureau of Customs. In addition, the Secretary of the Interior may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities hereunder. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes.

(c) Execution of process.

Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter.

(d) Arrests.

Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this chapter or the regulations issued thereunder;

(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of the provisions of this chapter or the regulations issued thereunder, then to arrest such person.

(e) Seizures and disposition of fish.

Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this chapter or the regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of the Interior.

(f) Security.

Notwithstanding the provisions of section 2464 of Title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case. (Sept. 7, 1950, ch. 907, § 10, 64 Stat. 779; Oct. 15, 1962, Pub. L. 87–814, § 5, 76 Stat. 925.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–814 substituted provisions for issuance of process for provisions respecting arrest and execution of process, incorporated in subsecs. (c) and (d)(1) of this section.

Subsec. (b). Pub. L. 87–814 substituted provisions respecting Federal law enforcement agents for provisions relating to inspections, incorporated in section 956 of this title.

Subsec. (c). Pub. L. 87–814 substituted provisions for execution of process, formerly incorporated in subsec. (a), for provisions respecting the functioning of officers and law enforcement officers, incorporated in subsec. (b) of this section.

Subsec. (d). Pub. L. 87–814 incorporated provisions of former subsec. (a) in par. (1) and added par. (2).

Subsecs. (e), (f). Pub. L. 87–814 added subsecs. (e) and (f).

CHANGE OF NAME

References to United States commissioners to be deemed references to United States magistrates, see Pub. L. 90–578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, which provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under section 631 of Title 28 as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 960. Commissions' functions not restrained by this chapter or state laws.

None of the prohibitions contained in this chapter or in the laws and regulations of the States shall prevent the commissions from conducting or authorizing the conduct of fishing operations and biological experiments at any time for the purpose of scientific investigations as authorized by the conventions, or shall prevent the commissions from discharging any of its or their functions or duties prescribed by the conventions. (Sept. 7, 1950, ch. 907, § 11, 64 Stat. 779.)

§ 961. Appropriations authorized.

There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of each convention and of this chapter, including—

(a) contributions to each commission for the United States share of any joint expenses of the commission and the expenses of the United States Commissioners and their staff, including personal services in the District of Columbia and elsewhere;

(b) travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, or section 73b of Title 5;

(c) printing and binding without regard to section 111 of Title 44, or section 5 of Title 41;

(d) stenographic and other services by contract, if deemed necessary, without regard to section 5 of Title 41; and

(e) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats and research vessels. (Sept. 7, 1950, ch. 907, § 12, 64 Stat. 780.)

REFERENCES IN TEXT

The Travel Expense Act of 1949, referred to in the text of subsection (b), is now covered by section 2105 and section 5701 et seq. of Title 5, Government Organization and Employees.

Section 73b of Title 5, referred to in subsec. (b), is now covered by section 5731 of Title 5.

Section 111 of Title 44, referred to in subsec. (c), is now covered by section 501 of Title 44, Public Printing and Documents.

40. Whale Conservation and Protection Study Act

P.L. 94–532 (90 Stat. 2491)

AN ACT

To study and provide enhanced protection for whales, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Whale Conservation and Protection Study Act".

FINDINGS

SEC. 2. The Congress finds that—

(1) whales are a unique resource of great aesthetic and scientific interest to mankind and are a vital part of the marine ecosystem;

(2) whales have been overexploited by man for many years, severely reducing several species and endangering others;

(3) the United States has extended its authority and responsibility to conserve and protect all marine mammals, including whales, out to a two hundred nautical mile limit by enactment of the Fishery Conservation and Management Act of 1976 (Public Law 94–265);

(4) the conservation and protection of certain species of whales, including the California gray, bowhead, sperm, and killer whale, are of particular interest to citizens of the United States;

(5) increased ocean activity of all types may threaten the whale stocks found within the two hundred-mile jurisdiction of the United States and added protection of such stocks may be necessary;

(6) there is inadequate knowledge of the ecology, habitat requirements, and population levels and dynamics of all whales found in waters subject to the jurisdiction of the United States; and

(7) further study of such matters is required in order for the United States to carry out its responsibilities for the conservation and protection of marine mammals.

STUDY BY THE SECRETARY OF COMMERCE

SEC. 3. The Secretary of Commerce, in consultation with the Marine Mammal Commission and the coastal States, shall undertake comprehensive studies of all whales found in waters subject to the jurisdiction of the United States, including the fishery conservation zone as defined in section (3)(8) of the Fishery Conservation and Management Act (16 U.S.C. 1802(8)). Such studies shall take into consideration all relevant factors regarding (1) the conservation and protection of all such whales, (2) the distribution, migration patterns, and population dynamics of these mammals, and (3) the effects on all such whales of habitat destruction, disease, pesticides and other chemicals, disruption of migration patterns, and food shortages for the purpose of developing adequate and effective measures, including appropriate laws and regulations, to conserve and protect such mammals. The Secretary of Commerce shall report on such studies, together with such recommendations as he deems appropriate, including suggested legislation, to the Congress no later than January 1, 1980.

COOPERATION OF OTHER FEDERAL AGENCIES

SEC. 4. All Federal agencies shall cooperate, to the fullest extent possible, with the Secretary of Commerce in preparing the study and recommendations required by section 3.

INTERNATIONAL NEGOTIATIONS

SEC. 5. The Secretary of Commerce, through the Secretary of State, shall immediately initiate negotiations for the purpose of developing appropriate bilateral agreements with Mexico and Can-

ada for the protection and conservation of whales.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. For the purpose of carrying out the provisions of this Act, there is hereby authorized to be appropriated a sum not to exceed $1,000,000 for fiscal years 1978 and 1979.

41. Whaling Convention Act of 1949

16 U.S.C. 916–916l

Sec.
916. Definitions.
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916b. Acceptance or rejection by United States Government of regulations, etc.; acceptance of reports, recommendations, etc., of Commission.
916c. Unlawful acts.
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(a) Issuance.
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916g. Enforcement of chapter; enforcement officers; arrests; search and seizure of vessels; disposal of property; stay of execution upon posting of bond; bond requirements.
916h. Cooperation between Federal and State and private agencies and organizations in scientific and other programs.
916i. Taking of whales for biological experiments.
916j. Administration of enforcement provisions.
916k. Regulations; submission; publication; effectiveness.
916l. Appropriation authorization.

§ 916. Definitions.

When used in this chapter—

(a) Convention: The word "convention" means the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946, by the United States of America and certain other governments.

(b) Commission: The word "Commission" means the International Whaling Commission established by article III of the convention.

(c) United States Commissioner: The words "United States Commissioner" mean the member of the International Whaling Commission representing the United States of America appointed pursuant to article III of the convention and section 916a of this title.

(d) Person: The word "person" denotes every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(e) Vessel: The word "vessel" denotes every kind, type, or description of water craft or contrivance subject to the jurisdiction of the United States used, or capable of being used, as a means of transportation.

(f) Factory ship: The words "factory ship" mean a vessel in which or on which whales are treated or processed, whether wholly or in part.

(g) Land station: The words "land station" mean a factory on the land at which whales are treated or processed, whether wholly or in part.

(h) Whale catcher: The words "whale catcher" mean a vessel used for the purpose of hunting, killing, taking, towing, holding onto, or scouting for whales.

(i) Whale products: The words "whale products" mean any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

(j) Whaling: The word "whaling" means the scouting for, hunting, killing, taking, towing, holding onto, and flensing of whales, and the possession, treatment, or processing of whales or of whale products.

(k) Regulations of the Commission: The words "regulations of the Commission" mean the whaling regulations in the schedule annexed to and constituting a part of the convention in their original form or as modified, revised, or amended by the Commission from time to time, in pursuance of article V of the convention.

(l) Regulations of the Secretary of the Interior: The words "regulations of the Secretary of the Interior" mean such regulations as may be issued by the Secretary of the Interior, from time to time, in accordance with sections 916i and 916j of this title. (Aug. 9, 1950, ch. 653, § 2, 64 Stat. 421.)

SHORT TITLE

Congress in enacting this chapter provided by section 1 of act Aug. 9, 1950, that it should be popularly known as the "Whaling Convention Act of 1949".

SEPARABILITY OF PROVISIONS

Section 15 of act Aug. 9, 1950, provided that: "If any provision of this Act [sections 916—916*l* of this title] or the application of such provisions to any circumstances or persons shall be held invalid, the validity of the remainder of the Act [said sections] and the applicability of such provision to other circumstances or persons shall not be affected thereby."

§ 916a. United States Commissioner and Deputy Commissioner; appointment, tenure, and compensation.

(a) The United States Commissioner shall be appointed by the President, on the concurrent recommendations of the Secretary of State and the Secretary of the Interior, and shall serve at the pleasure of the President.

(b) The President may appoint a Deputy United States Commissioner, on the concurrent recommendations of the Secretary of State and the Secretary of the Interior. The Deputy United States Commissioner shall serve at the pleasure of the President and shall be the principal technical adviser to the United States Commissioner, and shall be empowered to perform the duties of the Commissioner in case of the death, resignation, absence, or illness of the Commissioner.

(c) The United States Commissioner and Deputy Commissioner, although officers of the United States Government, shall receive no compensation for their services. (Aug. 9, 1950, ch. 653, § 3, 64 Stat. 421.)

§ 916b. Acceptance or rejection by United States Government of regulations, etc.; acceptance of reports, recommendations, etc., of Commission.

The Secretary of State is authorized, with the concurrence of the Secretary of the Interior, to present or withdraw any objections on behalf of the United States Government to such regulations or amendments of the schedule to the convention as are adopted by the Commission and submitted to the United States Government in accordance with article V of the convention. The Secretary of State is further authorized to receive on behalf of the United States Government reports, requests, recommendations, and other communications of the Commission, and to act thereon either directly or by reference to the appropriate authority. (Aug. 9, 1950, ch. 653, § 4, 64 Stat. 422.)

§ 916c. Unlawful acts.

(a) It shall be unlawful for any person subject to the jurisdiction of the United States (1) to engage in whaling in violation of the convention or of any regulation of the Commission, or of this chapter, or of any regulation of the Secretary of the Interior; (2) to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any whale or whale products taken or processed in violation of the convention, or of any regulation of the Commission, or of this chapter, or of any regulation of the Secretary of the Interior; (3) to fail to make, keep, submit, or furnish any record or report required of him by the convention, or by any regulation of the Commission, or by any regulation of the Secretary of the Interior, or to refuse to permit any officer authorized to enforce the convention, the regulations of the Commission, this chapter, and the regulations of the Secretary of the Interior, to inspect such record or report at any reasonable time.

(b) It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to do any act prohibited or to fail to do any act required by the convention, or by this chapter, or by any regulation adopted by the Commission, or by any regulation of the Secretary of the Interior. (Aug. 9, 1950, ch. 653, § 5, 64 Stat. 422.)

§ 916d. Licenses.

(a) Issuance.

No person shall engage in whaling without first having obtained an appropriate license or scientific permit. Such licenses shall be issued by the Secretary of the Interior or such officer of the Department of the Interior as may be designated by him: *Provided*, That the Secretary, in his discretion and by appropriate regulation, may waive the payment of any license fee or the requirement that a license first be obtained, in connection with the salvage of any "Dauhval" or unclaimed dead whale found floating or stranded.

(b) Licenses and fees required.

The following licenses and fees shall be required for each calendar year or any fraction thereof and shall be nontransferable except under such conditions as may be prescribed by the Secretary:

(1) Land-station license for primary processing of whales, $250.

(2) Land-station license for secondary processing of parts of whales delivered to it by a land station licensed as a primary processor, $100.

(3) Factory-ship license for primary processing of whales delivered by whale catchers, $250.

(4) License for any vessel used exclusively for transporting whale products from a factory ship to a port during the whaling season, $100.

(5) Whale-catcher license, $100.

(c) Disposition of fees.

All moneys derived from the issuance of whaling licenses shall be covered into the Treasury of the United States, and no license fee shall be refunded by reason of the failure of any person to whom a license has been issued to utilize the facility in whaling for which such license was issued.

(d) Application; conditions precedent.

Any person, in making application for a license to operate a whale catcher, must furnish evidence or affidavit satisfactory to the Secretary of the Interior that, in addition to conforming to other applicable laws and regulations, (1) the whale catcher is adequately equipped and competently manned to engage in whaling in accordance with the provisions of the convention, the regulations of the Commission, and the regulations of the Secretary of the Interior; (2) gunners and crews will be compensated on some basis that does not depend primarily on the number of whales taken; and (3) no bonus or other partial remuneration with relation to the number of whales taken shall be paid to gunners and crews in respect of the taking of any whales, the taking of which is prohibited.

(e) Same; additional conditions.

Any person, in making application for a license to operate a land station or a factory ship must furnish evidence or affidavits to the satisfaction of the Secretary of the Interior that, in addition to conforming to other applicable laws and regulations, such land station or factory ship is adequately equipped to comply with provisions of the convention, of the regulations of the Commission, and of the regulations of the Secretary of the Interior with respect to the processing of whales or the manufacture of whale products. (Aug. 9, 1950, ch. 653, § 6, 64 Stat. 422.)

Refund of License Fees Paid Under Former Sections 901—915 of This Title

Section 16 of act Aug. 9, 1950, provided in part that the Secretary of the Interior is authorized to refund any part of a license fee paid under former section 908 of this title that is in excess of the license fee required under this section.

§ 916e. Failure to keep returns, records, reports.

Any person who fails to make, keep, or furnish any catch return, statistical record, or any report that may be required by the convention, or by any regulation of the Commission, or by this chapter, or by a regulation of the Secretary of the Interior, or any

person who furnishes a false return, record, or report, upon conviction, shall be subject to such fine as may be imposed by the court not to exceed $500, and shall in addition be prohibited from whaling, processing, or possessing whales and whale products from the date of conviction until such time as any delinquent return, record, or report shall have been submitted or any false return, record, or report shall have been replaced by a duly certified correct and true return, record, or report to the satisfaction of the court. The penalties imposed by section 916f of this title shall not be invoked for failure to comply with requirements respecting returns, records, and reports. (Aug. 9, 1950, ch. 653, § 7, 64 Stat. 423.)

§ 916f. Violations; fines and penalties.

Except as to violations defined in clause 3 of subsection (a) of section 916c of this title, any person violating any provision of the convention, or of any regulation of the Commission, or of this chapter, or of any regulation of the Secretary of the Interior upon conviction, shall be fined not more than $10,000 or be imprisoned not more than one year, or both. In addition the court may prohibit such person from whaling for such period of time as it may determine, and may order forfeited, in whole or in part, the whales taken by such person in whaling during the season, or the whale products derived therefrom or the monetary value thereof. Such forfeited whales or whale products shall be disposed of in accordance with the direction of the court. (Aug. 9, 1950, ch. 653, § 8, 64 Stat. 423.)

§ 916g. Enforcement of chapter; enforcement officers; arrests; search and seizure of vessels; disposal of property; stay of execution upon posting of bond; bond requirements.

(a) Any duly authorized enforcement officer or employee of the Fish and Wildlife Service of the Department of the Interior; any Coast Guard officer; any United States marshal or deputy United States marshal; any customs officer; and any other person authorized to enforce the provisions of the convention, the regulations of the Commission, this chapter, and the regulations of the Secretary of the Interior, shall have power, without warrant or other process but subject to the provisions of the convention, to arrest any person subject to the jurisdiction of the United States committing in his presence or view a violation of the convention or of this chapter, or of the regulations of the Commission, or of the regulations of the Secretary of the Interior and to take such person immediately for examination before a justice or judge or any other official designated in section 3041 of Title 18; and shall have power, without warrant or other process, to search any vessel subject to the jurisdiction of the United States or land station when he has reasonable cause to believe that such vessel or land station is engaged in whaling in violation of the provisions of the convention or this chapter, or the regulations of the Commission, or the regulations of the Secretary of the Interior. Any person authorized to enforce the provisions of the convention, this chapter, the regulations of the Commission, or the regulations of the Secretary of the Interior shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of this chapter, and shall have power with a search warrant to search any vessel, person, or place at any time. The judges of the United States district courts and the United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. Subject to the provisions of the convention, any person authorized to enforce the convention, this chapter, the regulations of the Commission, and the regulations of the Secretary of the Interior may seize, whenever and wherever lawfully found, all whales or whale products taken, processed, or possessed contrary to the provisions of the convention, of this chapter, of the regulations of the Commission, or of the regulations of the Secretary of the Interior.

Any property so seized shall not be disposed of except pursuant to the order of a court of competent jurisdiction or the provisions of subsection (b) of this section, or, if perishable, in the manner prescribed by regulations of the Secretary of the Interior.

(b) Notwithstanding the provisions of section 2464 of Title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any property seized if the process has been levied, on receiving from the claimant of the property a bond or stipulation for double the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction, conditioned to deliver the property seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. (Aug. 9, 1950, ch. 653, § 9, 64 Stat. 423.)

CHANGE OF NAME

References to United States commissioners to be deemed references to United States magistrates, see Pub. L. 90–578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, which provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under section 631 of Title 28 as soon as the first United States magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 916h. Cooperation between Federal and State and private agencies and organizations in scientific and other programs.

(a) In order to avoid duplication in scientific and other programs, the Secretary of State, with the concurrence of the agency, institution, or organization concerned, may direct the United States Commissioner to arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the convention.

(b) All agencies of the Federal Government are authorized, on request of the Commission, to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the Commission in the performance of its duties as prescribed by the convention. (Aug. 9, 1950, ch. 653, § 10, 64 Stat. 424.)

§ 916i. Taking of whales for biological experiments.

Nothing contained in this chapter shall prevent the taking of whales and the conducting of biological experiments at any time for purposes of scientific investigation in accordance with scientific permits and regulations issued by the Secretary of the Interior or shall prevent the Commission from discharging its duties as prescribed by the convention. (Aug. 9, 1950, ch. 653, § 11, 64 Stat. 424.)

§ 916j. Administration of enforcement provisions.

(a) The Secretary of the Interior is authorized and directed to administer and enforce all of the provisions of this chapter and regulations issued pursuant thereto and all of the provisions of the convention and of the regulations of the Commission, except to the extent otherwise provided for in this chapter, in the convention, or in the regulations of the Commission. In carrying out such functions he is authorized to adopt such regulations as may be necessary to carry out the purposes and objectives of the convention, the regulations of the Commission, this chapter, and with the concurrence of the Secretary of State, to cooperate with the duly authorized officials of the government of any party to the convention.

(b) Enforcement activities under the provisions of this chapter relating to vessels engaged in whaling and subject to the jurisdiction of the United States primarily shall be the responsibility of the Secretary of the Treasury in cooperation with the Secretary of the Interior.

(c) The Secretary of the Interior may authorize officers and employees of the coastal States of the United States to enforce the provisions of the convention, or of the regulations of the Commission, or of this chapter, or of the regulations of the Secretary of the Interior. When so authorized such officers and employees may function as Federal law-enforcement officers for the purposes of this chapter. (Aug. 9, 1950, ch. 653, § 12, 64 Stat. 425.)

§ 916k. Regulations; submission; publication; effectiveness.

Regulations of the Commission approved and effective in accordance with section 916b of this title and article V of the convention shall be submitted for appropriate action or publication in the Federal Register by the Secretary of the Interior and shall become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations and the provisions of article V of the convention. (Aug. 9, 1950, ch. 653, § 13, 64 Stat. 425.)

§ 916*l*. Appropriation authorization.

There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of the convention and of this chapter, including (1) contributions to the Commission for the United States share of any joint expenses of the Commission agreed by the United States and any of the other contracting governments, and (2) the expenses of the United States Commissioner and his staff, including (a) personal services in the District of Columbia and elsewhere, without regard to the civil-service laws and the Classification Act of 1923, as amended; (b) travel expenses without regard to the Travel Expense Act of 1949 and section 73b of Title 5; (c) transportation of things, communication services; (d) rent of offices; (e) printing and binding without regard to section 111 of Title 44, and section 5 of Title 41; (f) stenographic and other services by contract, if deemed necessary, without regard to section 5 of Title 41; (g) supplies and materials; (h) equipment; (i) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats, and research vessels. (Aug. 9, 1950, ch. 653, § 14, 64 Stat. 425.)

TITLE VI—FISHERMEN

1. Attachment of Fishermen's Wages

46 U.S.C. 601

§ 601. Attachment or arrestment of wages; support of wife and minor children; State tax laws.

No wages due or accruing to any master, seaman, or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a master, seaman, or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. This section shall apply to fishermen employed on fishing vessels as well as to seamen: *Provided,* That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any master or seaman of any part of his wages for the support and maintenance of his wife and minor children: *And provided further,* That no part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, Territory, possession, or Commonwealth, or a subdivision of any of them. (Mar. 4, 1915, ch. 153, § 12, 38 Stat. 1169; Sept. 14, 1959, Pub. L. 86–263, 73 Stat. 551; Apr. 25, 1968, Pub. L. 90–293, § 1(d), 82 Stat. 108.)

AMENDMENTS

1968—Pub. L. 90–293 substituted "master, seaman, or apprentice" for "seaman or apprentice" wherever appearing and substituted "master or seaman" for "seaman" in provision prohibiting interference with court orders regarding the payment of a portion of wages for the support and maintenance of a wife and minor children.

1959—Pub. L. 86–263 added proviso prohibiting withholding from seamen's wages for State, Territory or Commonwealth taxes.

2. Exemption of Fishermen From Fair Labor Standards Act

29 U.S.C. 213(a)(5)

§ 213. Exemptions.

(a) The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and 207 of this title shall not apply with respect to—

* * * * *

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

* * * * *

(As amended June 23, 1972, Pub. L. 92–318, title IX, § 906(b)(1), 86 Stat. 375.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–318 inserted "(except subsection (d) in the case of paragraph (1) of this subsection)" following introductory text "sections 206".

3. Fishermen's Cooperative Association

15 U.S.C. 521–522

Sec.

§ 521. Fishing industry; associations authorized; aquatic products defined; marketing agencies; requirements.

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public

or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. (June 25, 1934, ch. 742, § 1, 48 Stat. 1213.)

§ 522. Monopolies or restraints of trade; service of complaint by Secretary of the Interior; hearing; order to cease and desist; jurisdiction of district court.

If the Secretary of the Interior shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of the Interior may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of the Interior shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of the Interior shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of the Interior and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof. (June 25, 1934, ch. 742, § 2, 48 Stat. 1214; 1939 Reorg. Plan No. II, § 4 (e), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1431.)

4. Inapplicability to Fishing Contests of Prohibitions on Tranportation and Mailing of Lottery Tickets, and on Broadcasting Lottery Information

18 U.S.C. 1301, 1305

§ 1301. Importing or transporting lottery tickets.

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, adver-

tisement, or list so brought, deposited, or transported, shall be fined not more than $1,000 or imprisoned not more than two years, or both. (June 25, 1948, ch. 645, 62 Stat. 762.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., § 387 (Mar. 4, 1909, ch. 321, § 237, 35 Stat. 1136).

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 1305. Fishing contests.

The provisions of this chapter shall not apply with respect to any fishing contest not conducted for profit wherein prizes are awarded for the specie, size, weight, or quality of fish caught by contestants in any bona fide fishing or recreational event. (Added Aug. 16, 1950, ch. 722, § 1, 64 Stat. 451.)

5. Loans to Fish Farmers

7 U.S.C. 1942, 1961, 1991

§ 1942. Purposes of loans; grants for pollution abatement and control projects, limitations.

(a) Loans may be made under this subchapter for (1) paying costs incident to reorganizing the farming system for more profitable operation, (2) purchasing livestock, poultry, and farm equipment, (3) purchasing feed, seed, fertilizer, insecticides, and farm supplies and to meet other essential farm operating expenses including cash rent, (4) financing land and water development, use, and conservation, (5) without regard to the requirements of section 1941(a) (2) and (3) of this title, to individual farmers or ranchers to finance outdoor recreational enterprises or to convert to recreational uses their farming or ranching operations, including those heretofore financed under this chapter, (6) enterprises needed to supplement farm income, (7) refinancing existing indebtedness, (8) other farm and home needs including but not limited to family subsistence, (9) loan closing costs, and (10) for assisting farmers or ranchers in effecting additions to or alterations in the equipment, facilities, or methods of operation of their farms or ranches in order to comply with the applicable standards promulgated pursuant to section 655 to Title 29 or standards adopted by a State pursuant to a plan approved under section 667 of Title 29, if the Secretary determines that any such farmer or rancher is likely to suffer substantial economic injury due to such compliance without assistance under this paragraph.

(b) Loans may also be made under this subchapter to residents of rural areas without regard to the requirements of clauses (2) and (3) of section 1941(a) of this title to operate in rural areas small business enterprises to provide such residents with essential income.

(c) Loans may also be made to eligible applicants under this subchapter for pollution abatement and control projects in rural areas.

(d) The Secretary may make grants, not to exceed $25,000,000 annually, to eligible applicants under this subchapter for pollution abatement and control projects in rural areas. No such grant shall exceed 50 per centum of the development cost of such a project. (As amended Pub. L. 92–419, title I, §§ 120 (b), 121, Aug. 30, 1972, 86 Stat. 665.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–419, §§ 120(b), 121 (1), (2), substituted "section 1941(a) for "section 1941" and designated existing provisions as subsec. (a), and added item (10).

Subsecs. (b)–(d). Pub. L. 92–419, § 121(3), added subsecs. (b)–(d).

§ 1961. Designation of emergency areas; persons eligible for loans.

(a) The Secretary shall designate any area in the United States, Puerto Rico, and the Virgin Islands as an emergency area if he finds that a natural disaster has occurred in said area which substantially affected farming, ranching, or aquaculture operations. For purposes of this subchapter "aquaculture" means husbandry of aquatic organisms under a controlled or selected environment.

(b) The Secretary shall make loans in any such area designated by the Secretary in accordance with subsection (a) of this section and in any area designated as a major disaster or emergency by the President pursuant to the provisions of the Disaster Relief Act of 1970, as amended, (1) to established farmers, ranchers, or persons engaged in aquaculture who are citizens of the United States and (2) to private domestic corporations or partnerships engaged primarily in farming, ranching, or aquaculture: *Provided*, That they have experience and resources necessary to assure a reasonable prospect for successful operation with the assistance of such loan and are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. The provisions of this subsection shall not be applicable to loan applications filed prior to July 9, 1975. (As amended Pub. L. 93–24, §§ 2, 3, 6, Apr. 20, 1973, 87 Stat. 24, 25; Pub. L. 93–237, § 10(a), (d), Jan. 2, 1974, 87 Stat. 1025; Pub. L. 94–68, §§ 2, 3, Aug. 5, 1975, 89 Stat. 381.)

REFERENCES IN TEXT

In the original "this chapter" read "this title", meaning the Consolidated Farm and Rural Development Act, title III of Pub. L. 87–128, as amended. For distribution of such title in the Code, see Short Title note under section 1921 of this title.

The Disaster Relief Act of 1970, as amended, referred to in subsec. (b), was repealed and is now covered by the Disaster Relief Act of 1974, section 5121 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–68, § 2, substituted provisions authorizing the Secretary to designate an emergency area if he finds that a natural disaster has occurred in that area which substantially affected farming, ranching, or aquaculture operations for provisions authorizing the Secretary to designate an emergency area if he finds that there exists in that area a general need for agricultural credit and that the need for such credit in that area is the result of a natural disaster, and added definition of "aquaculture".

Subsec. (b). Pub. L. 94–68, § 3, extended the authority of the Secretary to make loans to areas designated by the President as "Emergency" pursuant to Disaster Relief Act of 1970, substituted reference to persons engaged in aquaculture and aquaculture for reference to oyster planters and oyster planting respectively, struck out provision that such loans be made without regard to whether the required financial assistance is otherwise available from private, cooperative, or other responsible sources, added requirement that the loan applicant be unable to obtain credit elsewhere at reasonable rates and terms, and added sentence that the provisions of this subsection shall not apply to loan applications filed prior to July 9, 1975.

1974—Subsec. (a). Pub. L. 93–237, § 10(d), struck out "which cannot be met for temporary periods of time by private, cooperative, or other responsible sources (including loans the Secretary is authorized to make or insure under subchapters I and II of this chapter or any other Act of Congress), at reasonable rates and terms for loans for similar purposes and periods of time" following "a general need for agricultural credit".

Subsec. (b). Pub. L. 93–237, § 10(a), struck out ", and are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing practice and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time" following "a reasonable prospect for successful operation with the assistance of such loan" and added provision that the loans be made without regard to whether the required financial assistance is otherwise available from the private, cooperative, or other responsible sources.

1973—Subsec. (a). Pub. L. 93–24, §§ 2, 6, substituted in the parenthetical text "authorized to make or insure under subchapters I and II of this chapter" for "authorized to make under subchapter II of this chapter or to make or insure under subchapter I of this chapter" and the introductory words "shall designate" for "may designate", respectively.

Subsec. (b). Pub. L. 93–24, § 3, substituted the introductory text "shall make loans in any such area designated by the Secretary in accordance with subsection (a) of this section and in any area designated as a major disaster by the President pursuant to the provisions of the Disaster Relief Act of 1970, as amended," for "is authorized to make loans in any such area" and ": Provided, That" for "provided" preceding "they have experience".

EFFECTIVE DATE OF 1974 AMENDMENT

Section 10(b) of Pub. L. 93–237 provided that: "The provisions of subsection (a) of this section [amending subsec. (b) of this section] shall be given effect with respect to all loan applications and loans made in connection with a disaster occurring on or after April 20, 1973."

Section 10(d) of Pub. L. 93–237 provided in part that: "The provisions of this subsection [amending subsec. (a) of this section] shall be given effect with respect to all loan applications and loans made in connection with a disaster occurring on or after December 27, 1972."

NINETY-DAY EXTENSION AFTER JAN. 2, 1974, OF DEADLINE FOR SEEKING ASSISTANCE WITH REGARD TO DISASTERS OCCURRING ON OR AFTER DEC. 27, 1972.

Section 10(c) of Pub. L. 93–237 provided that: "With regard to all disasters occurring on or after December 27, 1972, the Secretary of Agriculture shall extend for ninety days after the date of enactment of this section [Jan. 2, 1974] the deadline for seeking assistance under section 321 of the Consolidated Farm and Rural Development Act [this section] as amended by this section [amending this section]."

§ 1991. Definitions.

As used in this chapter (1) the term "farmers" shall be deemed to include persons who are engaged in, or who, with assistance afforded under this chapter, intend to engage in, fish farming, (2) the term "farming" shall be deemed to include fish farming, and (3) the term "owner-operator" shall in the State of Hawaii include the lessee-operator of real property in any case in which the Secretary determines that the land cannot be acquired in fee simple by the applicant, adequate security is provided for the loan, and there is a reasonable probability of accomplishing the objectives and repayment of the loan: *Provided*, That item (3) shall be applicable to lessee-operators of Hawaiian Homes Commission lands only when and to the extent that it is possible for such lessee-operators to meet the conditions therein set out, and (4) the word "insure" as used in this chapter includes guarantee, which means to guarantee the payment of a loan originated, held, and serviced by a private financial agency or other lender approved by the Secretary, and (5) the term "contract of insurance" includes a contract of guarantee. (As amended Pub. L. 92–419, title I, § 128(a), Aug. 30, 1972, 86 Stat. 666.)

AMENDMENTS

1972—Pub. L. 92–419 added items 4 and 5.

1966—Pub. L. 89–586 added clause (3) authorizing loans by the Secretary of Agriculture on leasehold interests in Hawaii.

6. Medical Care for Seamen

42 U.S.C. 249

§ 249. Medical care and treatment of seamen and certain other persons; foreign seamen; certain quarantined persons; temporary treatment in emergency cases; authorization for outside treatment.

(a) The following persons shall be entitled, in accordance with regulations, to medical, surgical, and dental treatment and hospitalization without charge at hospitals and other stations of the Service:

(1) Seamen employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canal boats en-

gaged in the coasting trade;

(2) Seamen employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration;

(3) Seamen, not enlisted or commissioned in the military or naval establishments, who are employed on State school ships or on vessels of the United States Government of more than five tons' burden;

(4) Cadets at State maritime academies or on State training ships;

(5) Seamen on vessels of the Mississippi River Commission and, upon application of their commanding officers, officers and crews of vessels of the Fish and Wildlife Service;

(6) Enrollees in the United States Maritime Service on active duty and members of the Merchant Marine Cadet Corps;

(7) Seamen-trainees, while participating in maritime training programs to develop or enhance their employability in the maritime industry; and

(8) Persons who own vessels registered, enrolled, or licensed under the maritime laws of the United States, who are engaged in commercial fishing operations, and who accompany such vessels on such fishing operations, and a substantial part of whose services in connection with such fishing operations are comparable to services performed by seamen employed on such vessel or on vessels engaged in similar operations.

(b) When suitable accommodations are available, seamen on foreign-flag vessels may be given medical, surgical, and dental treatment and hospitalization on application of the master, owner, or agent of the vessel at hospitals and other stations of the Service at rates fixed by regulations. All expenses connected with such treatment, including burial in the event of death, shall be paid by such master, owner, or agent. No such vessel shall be granted clearance until such expenses are paid or their payment appropriately guaranteed to the Collector of Customs.

(c) Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.

(d) Persons not entitled to treatment and care at institutions, hospitals, and stations of the Service may, in accordance with regulations of the Surgeon General, be admitted thereto for temporary treatment and care in case of emergency.

(e) Persons entitled to care and treatment under subsection (a) of this section and persons whose care and treatment is authorized by subsection (c) of this section may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, when authorized by the officer in charge of the station at which the application is made. (July 1, 1944, ch. 373, title III, § 322, 58 Stat. 696; June 25, 1948, ch. 654, § 3, 62 Stat. 1018; Aug. 13, 1964, Pub. L. 88-424, 78 Stat. 398; Dec. 5, 1967, Pub. L. 90-174, § 10(c), 81 Stat. 541.)

AMENDMENTS

1967—Subsec. (a)(7). Pub. L. 90-174 substituted provision for entitlement to treatment and hospitalization of seamen-trainees, while participating in maritime training programs to develop or enhance their employability in the maritime industry, for provision for such entitlement of employees and noncommissioned officers in the field service of the Public Health Service when injured or taken sick in line of duty.

1964—Subsec. (a). Pub. L. 88-424 added par. (8).

1948—Subsec. (e). Act June 25, 1948, permitted the Service to provide for the care and treatment of individuals detained in accordance with our quarantine laws.

7. Purchase and Distribution of Surplus Fishery Products

15 U.S.C. 713c-2 to 713c-3

§ 713c-2. Purchase and distribution of surplus fishery products.

Any part of the funds not to exceed $1,500,000 per year, created under and to carry out the provisions of section 612c of Title 7, may also be used by the Secretary of Agriculture for the purpose of diverting surplus fishery products (including fish, shellfish, mollusks, and crustacea) from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief channels: *Provided*, That none of the funds made available to the Secretary of Agriculture under this section and section 713c-3 of this title shall be used to purchase any of the commodities designated in this section which may have been produced in any foreign country. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this section and section 713c-3 of this title. (Aug. 11, 1939, ch. 696, § 1, 53 Stat. 1411; 1940 Reorg. Plan No. III, § 5, eff. June 30, 1940, 5 F. R. 2108, 54 Stat. 1232; 1946 Reorg. Plan No. 3, § 501, eff. July 16, 1946, 11 F. R. 7877, 60 Stat. 1100.)

§ 713c-3. Same; promotion of the free flow of domestically produced fishery products.

(a) Transfer of funds.

The Secretary of Agriculture shall transfer to the Secretary of the Interior each fiscal year, beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957, from moneys made available to carry out the provisions of section 612c of Title 7, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund and used by the Secretary of the In-

terior (1) to promote the free flow of domestically produced fishery products in commerce by conducting a fishery educational service and fishery technological, biological and related research programs, the moneys so transferred to be also available for the purchase or other acquisition, construction, equipment, operation, and maintenance of vessels or other facilities necessary for conducting research as provided for in this section, and (2) to develop and increase markets for fishery products of domestic origin and (3) to conduct any biological, technological, or other research pertaining to American fisheries.

(b) Transfer of vessels or equipment by agencies.

For the purposes of this section, any agency of the United States, or any corporation wholly owned by the United States, is authorized to transfer, without reimbursement or transfer of funds, any vessels or equipment excess to its needs required by the Secretary of the Interior for the activities, studies, and research authorized herein.

(c) Cooperation by Secretary of Interior with other agencies, etc.; advisory committee.

In carrying out the purposes and objectives of this section, the Secretary of the Interior is directed as far as practicable to cooperate with other appropriate agencies of the Federal Government, with State or local governmental agencies, private agencies, organizations, or individuals, having jurisdiction over or an interest in fish or fishery commodities and he is authorized to appoint an advisory committee of the American fisheries industry to advise him in the formulation of policy, rules and regulations pertaining to requests for assistance, and other matters.

(d) Retransfer of funds for purposes of section 713c–2.

The Secretary of the Interior is further authorized to retransfer any of the funds not to exceed $1,500,000 to be made available under this section to the Secretary of Agriculture to be used for the purposes specified in section 713c–2 of this title, and only such funds as are thus transferred shall be used for the purposes specified in section 713c–2 of this title with respect to domestically produced fishery products.

(e) Availability of funds.

The separate fund created for the use of the Secretary of the Interior under subsection (a) of this section and the annual accruals thereto shall be available for each year hereafter until expended by the Secretary. (Aug. 11, 1939, ch. 696, § 2, 53 Stat. 1412; July 1, 1954, ch. 447, 68 Stat. 376; Aug. 8, 1956, ch. 1036, § 12(b), 70 Stat. 1124; Nov. 8, 1965, Pub. L. 89–348, § 1(13), 79 Stat. 1311.)

AMENDMENTS

1965—Subsec. (f). Pub. L. 89–348 repealed subsec. (f) which required an annual report to the appropriate committees of Congress on the use of the separate fund.

1956—Subsec. (e). Act Aug. 8, 1956, eliminated provisions which limited expenditures to not more than $3,000,000 in any fiscal year, restricted the balance of the fund to not more than $5,000,000 at the end of any fiscal year, and required the Secretary of the Interior to retransfer funds in excess of the $5,000,000 to the Secretary of Agriculture.

1954—Act July 1, 1954, amended section generally further to encourage the distribution of fishery products.

8. Regulation of Fishing Voyages

46 U.S.C. 531–534

Sec.
531. Agreement for fishing voyage.
532. Penalty for violating agreement.
533. Recovery of shares of fish under agreement.
534. Discharge of vessel on bond by owner.

§ 531. Agreement for fishing voyage.

The master of any vessel of the burden of twenty tons or upward, qualified according to law for carrying on the bank and other cod fisheries, or the mackerel fishery, bound from a port of the United States to be employed in any such fishery, at sea, shall, before proceeding on such fishing voyage, make an agreement in writing with every fisherman who may be employed therein, except only an apprentice or servant of himself or owner, and, in addition to such terms of shipment as may be agreed on, shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish or the proceeds of such fishing voyage or voyages which may appertain to the fishermen shall be divided among them in proportion to the quantities or number of such fish which they may respectively have caught. Such agreement shall be indorsed or countersigned by the owner of such fishing vessel or his agent. (R. S. § 4391.)

§ 532. Penalty for violating agreement.

If any fisherman, having engaged himself for a voyage or for the fishing season in any fishing vessel and signed an agreement therefor, thereafter and while such agreement remains in force and to be performed deserts or absents himself from such vessel without leave of the master thereof, or of the owner or his agent, such deserter shall be liable to the same penalties as deserting seamen are subject to in the merchant service, and may in the like manner, and upon the like complaint and proof, be apprehended and detained; and all costs of process and commitment, if paid by the master or owner, shall be deducted out of the share of fish or proceeds of any fishing voyage to which such deserter had or shall become entitled. Every fisherman, having so engaged himself, who during such fishing voyage refuses or neglects his proper duty on board the fishing vessel, being thereto ordered or required by the master thereof, or otherwise resists his just commands to the hinderance or detriment of such voyage, besides being answerable for all damages aris-

ing thereby, shall forfeit to the use of the owner of such vessel his share of any public allowance which may be paid upon such voyage. (R. S. § 4392.)

§ 533. Recovery of shares of fish under agreement.

Whenever an agreement or contract is so made and signed for a fishing voyage or for the fishing season, and any fish caught on board such vessel during the same are delivered to the owner or to his agent, for cure, and sold by such owner or agent, such vessel shall, for the term of six months after such sale, be liable for the master's and every other fisherman's share of such fish, and may be proceeded against in the same form and to the same effect as any other vessel is by law liable, and may be proceeded against for the wages of seamen or mariners in the merchant service. Upon such proceeding for the value of a share or shares of the proceeds of fish so delivered and sold it shall be incumbent on the owner or his agent to produce a just account of the sales and division of such fish according to such agreement or contract; otherwise the vessel shall be answerable upon such proceeding for what may be the highest value of the shares demanded. But in all cases the owner of such vessel or his agent, appearing to answer in such proceeding, may offer thereupon his account of general supplies made for such fishing voyage and of other supplies therefor made to either of the demandants, and shall be allowed to produce evidence thereof in answer to their demands respectively; and judgment shall be rendered upon such proceeding for the respective balances which upon such an inquiry shall appear. (R. S. § 4393.)

§ 534. Discharge of vessel on bond by owner.

When process shall be issued against any vessel so liable, if the owner thereof or his agent will give bond to each fisherman in whose favor such process shall be instituted, with sufficient security, to the satisfaction of two justices of the peace, of whom one shall be named by such owner or agent, and the other by the fisherman or fishermen pursuing such process, or if either party shall refuse, then the justice first appointed shall name his associate, with condition to answer and pay whatever sum shall be recovered by him or them on such process, there shall be an immediate discharge of such vessel. Nothing in this section or section 533 of this title shall prevent any fisherman from having his action at common law for his share or shares of fish or the proceeds thereof. (R. S. § 4394.)

9. Sections of Internal Revenue Laws Expressly Related to Fishermen or Vessels

26 U.S.C. 4161, 4221, 6073, 6153b

§ 4161. Imposition of tax.

(a) Rods, creels, etc.

There is hereby imposed upon the sale of fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer a tax equivalent to 10 percent of the price for which so sold.

* * * * *

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–558, § 201(a)(1), designated existing provisions as subsec. (a), and inserted catchline.

Subsec. (b). Pub. L. 92–558, § 201(a)(2) added subsec. (b).

1965—Pub. L. 89–44 removed the 10 percent tax on equipment for billiards, pool, bowling, trap shooting, cricket, croquet, badminton, curling, deck tennis, golf, lacrosse, polo, skiing, squash, table tennis, and tennis, and retained the tax only for fishing equipment.

§ 4221. Certain tax-free sales.

(a) General rule.

Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this chapter on the sale by the manufacturer of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government, or

(5) to a nonprofit educational organization for its exclusive use,

but only if such exportation or use is to occur before any other use.

* * * * *

(3) Supplies for vessels or aircraft.

The term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term "vessels" includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign

nation and constituting a part of the armed forces thereof.

§ 6073. Time for filing declarations of estimated income tax by individuals.

(a) Individuals other than farmers or fishermen.

Declarations of estimated tax required by section 6015 from individuals regarded as neither farmers nor fishermen for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of section 6015 are first met—

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(b) Farmers or fishermen.

Declarations of estimated tax required by section 6015 from individuals whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the succeeding taxable year.

(c) Amendment.

An amendment of a declaration may be filed in any interval between installment dates prescribed for that taxable year, but only one amendment may be filed in each such interval.

(d) Short taxable years.

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate. In the case of a nonresident alien described in section 6072(c), the requirements of section 6015 shall be deemed to be first met no earlier than after April 1 and before June 2 of the taxable year.

(e) Fiscal years.

In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto. (Aug. 16, 1954, ch. 736, 68A Stat. 750; Sept. 25, 1962, Pub. L. 87–682, § 1 (a)(2), (b), (c), 76 Stat. 575 amended Pub. L. 94–455 § 1012 (c), Oct. 4, 1976, 90 Stat. 1614.)

AMENDMENTS

1976—Subsec. (d), Pub. L. 94–455, § 1012(c) added the last sentence.

1962—Subsec. (a). Pub. L. 87–682, § 1(b), (c), substituted "individuals regarded as neither farmers nor fishermen" for "individuals not regarded as farmers" in the text, and inserted "or Fishermen" in the catchline.

Subsec. (b). Pub. L. 87–682, § 1(a)(2), (c), inserted "or fishing" following "from farming" in the text, and "or Fishermen" in the catchline.

§ 6153. Installment payments of estimated income tax by individuals.

(b) Farmers or fishermen.

If an individual referred to in section 6073(b) (relating to income from farming or fishing) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

10. Use of Surplus Agricultural Commodities

7 U.S.C. 1691, 1691a, 1732

§ 1691. Declaration of policy.

The Congress hereby declares it to be the policy of the United States to expand international trade; to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; and to promote in other ways the foreign policy of the United States. In furnishing food aid under this chapter, the President shall—

(1) give priority consideration, in helping to meet urgent food needs abroad, to making available the maximum feasible volume of food commodities (with appropriate regard to domestic price and supply situations) required by those countries most seriously affected by food shortages and by inability to meet immediate food requirements on a normal commercial basis;

(2) continue to urge all traditional and potential new donors of food, fertilizer, or the means of financing these commodities to increase their participation in efforts to address the emergency and longer term food needs of the developing world;

(3) relate United States assistance to efforts by aid-receiving countries to increase their own agricultural production, with emphasis on development of small, family farm agriculture, and improve their facilities for transportation, storage, and distribution of food commodities;

(4) give special consideration to the potential for expanding markets for America's agricultural abundance abroad in the allocation of commodities or concessional financing; and

(5) give appropriate recognition to and support of a strong and viable American farm economy in

providing for the food security of consumers in the United States and throughout the world. (July 10, 1954, ch. 469, § 2, 68 Stat. 454; Nov. 11, 1966, Pub. L. 89–808, § 2(A), 80 Stat. 1526; amended Dec. 20, 1975, Pub. L. 94–161, title II, § 201, 89 Stat. 850.)

AMENDMENTS

1975—Pub. L. 94–161 added provisions of second sentence, including cls. (1) to (5), respecting considerations in furnishing food aid under this chapter.

1966—Pub. L. 89–808 restated the Congressional declaration of policy to include the use of the abundant agricultural productivity of the United States to combat hunger and malnutrition and the emphasis on assistance to those developing countries that are determined to improve their own agricultural production and to exclude statement of a policy to facilitate the convertibility of currency, to make maximum efficient use of surplus agricultural commodities in furtherance of the foreign policy of the United States, to purchase strategic materials, to pay United States obligations abroad, and to promote collective strength.

OFFICE OF EMERGENCY PREPAREDNESS

Functions of the Director of the Office of Emergency Preparedness under Ex. Ord. No. 10900, Jan. 6, 1961, 26 F.R. 143, as amended [set out as a note under this section], transferred to the Administrator of General Services, see section 3 of Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175, set out as a note under section 2271 of Title 50, Appendix, War and National Defense.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget. See Office of Management and Budget note set out under this section in the main volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1701 of this title; title 10 section 2681.

§ 1691a. World Food Conference goal; United States contribution.

Pursuant to the World Food Conference recommendation that donor countries provide a total of at least ten million tons of food assistance to needy nations annually, the President is urged to maintain a significant United States contribution to this goal and to encourage other countries to maintain and increase their contributions as well. (July 10, 1954, ch. 469, § 3, as added Dec. 20, 1975, Pub. L. 94–161, title II, § 202, 89 Stat. 851.)

WORLD FOOD CONFERENCE RECOMMENDATIONS; REPORT TO CONGRESS OF EXECUTIVE IMPLEMENTATION

Section 213 of Pub. L. 94–161 provided that: "The Congress calls upon the President to strengthen the efforts of the United States to carry out the recommendations of the World Food Conference. The President shall submit a detailed report to the Congress not later than November 1, 1976, with respect to the steps he has taken to carry out the recommendations of the World Food Conference, including steps to fulfill the commitment of the United States and to encourage other nations to increase their participation in efforts to improve the food security of the poorest portion of the world's population."

* * * * *

§ 1732. Agricultural commodity defined; fishery products available.

The term "agricultural commodity" as used in this chapter and sections 1427 and 1431 of this title shall include any agricultural commodity produced in the United States or product thereof produced in the United States: *Provided, however,* That the term "agricultural commodity" shall not include alcoholic beverages, and for the purposes of subchapter III of this chapter, tobacco or products thereof. The foregoing proviso shall not be construed as prohibiting representatives of the domestic wine industry from participating in market development activities carried out with foreign currencies made available under subchapter II of this chapter which have as their purpose the expansion of export sales of United States agricultural commodities. Subject to the availability of appropriations therefor, any domestically produced fishery product may be made available under this chapter and sections 1427 and 1431 of this title. (As amended July 1, 1971, Pub. L. 92–42, 85 Stat. 99.)

AMENDMENTS

1971—Pub. L. 92–42 inserted requirement that proviso excluding alcoholic beverages from term "agricultural commodity" be not construed as prohibiting domestic wine industry from participating in market development activities for expansion of export sales of domestic agricultural commodities.

1966—Pub. L. 89–808 substituted definition of agricultural commodity and provision as to availability of fishery products for former provisions respecting agreements for delivery of surplus agricultural commodities, period, and security for payments in relation to long-term supply contracts, now covered by subchapter II of this chapter. See section 1707 of this title.

1962—Pub. L. 87–703 authorized executive agreements with financial institutions acting in behalf of friendly nations and administrative sales agreements with foreign and United States private trade with provision for security for payments.

TITLE VII—FISHING VESSELS

1. Admiralty and Maritime Jurisdiction

46 U.S.C. 740

Sec.
740. Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period.

§ 740. Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period.

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: *Provided*, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: *Provided further*, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. (June 19, 1948, ch. 526, 62 Stat. 496.)

2. Construction Assistance for Fishing Vessels

46 U.S.C. 1401–1413

Sec.
1401. Authorization for payment of subsidies for construction of fishing vessels.
1402. Application for subsidy; conditions.
1403. Approval of application; contract for payment of subsidy.
1404. Repealed.
1405. Cost determination and limitation.
1406. Supervision of construction; submission of plans to Secretary of Defense.
1407. Conditions of construction.
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1409. Transfer of vessels to other fisheries; vessels operated contrary to provisions of chapter; repayments.
1410. Rules and regulations.
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§ 1401. Authorization for payment of subsidies for construction of fishing vessels.

In order to correct inequities in the construction of fishing vessels of the United States, the Secretary of the Interior is authorized to pay in accordance with this chapter a subsidy for the construction of fishing vessels in the shipyards of the United States. (Pub. L. 86–516, § 1, June 12, 1960, 74 Stat. 212; Pub. L. 88–498, § 2(1), Aug. 30, 1964, 78 Stat. 614.)

AMENDMENTS

1964—Pub. L. 88–498 restated the purpose of the subsidy as being to correct inequities in the construction of fishing vessels of the United States instead of as being to assist certain depressed segments of the fishing industry.

§ 1402. Application for subsidy; conditions.

Any citizen of the United States may apply to the Secretary for a construction subsidy to aid in construction of a new fishing vessel in accordance with this chapter. Any citizen of the United States may apply to the Secretary for a construction subsidy to aid in the remodeling of any vessel in accordance with this chapter. No such application shall be approved by the Secretary unless he determined that (1) the plans and specifications for the fishing vessel are suitable for use in the fishery in which that vessel will operate and suitable in the case of a new fishing vessel and, when appropriate, a remodeled vessel, for use by the United States for National Defense or military purposes in time of war or National emergency, (2) that the applicant possesses the ability, experience, resources, and other qualifications necessary to enable him to operate and maintain the proposed fishing vessel, (3) will aid in the development of the United States fisheries under conditions that the Secretary considers to be in the public interests, (4) that the vessel, except under force majeure will deliver its full catch to a port of

the United States, (5) that the applicant will employ on the vessel only citizens of the United States or aliens legally domiciled in the United States, (6) the vessel will be documented under the laws of the United States, (7) the vessel will be modern in design and equipment, be capable, when appropriate, to operate in expanded areas, and will not operate in a fishery if such operation would cause economic hardship to operators of efficient vessels already operating in that fishery unless such vessel will replace a vessel of the applicant operating in the same fishery during the twenty-four-month period immediately preceding the date an application is filed by the applicant, and having a comparable fishing capacity of the replacement vessel, and (8) such other conditions as the Secretary may consider to be in the public interest. (Pub. L. 86–516, § 2, June 12, 1960, 74 Stat. 212; Pub. L. 88–498, § 2(2), Aug. 30, 1964, 78 Stat. 614; Pub. L. 91–279, § 1, June 12, 1970, 84 Stat. 307.)

AMENDMENTS

1970—Pub. L. 91–279 authorized application for construction subsidy to aid in remodeling of any vessel; inserted in cl. (1) after "and suitable" the words ", in the case of a new fishing vessel and, when appropriate, a remodeled vessel, "; deleted in cl. (2) the term "new" from the phrase "new fishing vessel"; and, in rewriting cl. (7), required the vessel to be modern in design rather than of advance design, that it be modern in equipment rather than that it be equipped with newly developed gear, and that it replace a vessel of the applicant operating in the same fishery during the twenty-four month period immediately preceding the date an application is filed by the applicant, and having a comparable fishing capacity of the replacement vessel, respectively.

1964—Pub. L. 88–498 required the Secretary to determine that the vessel will be of advance design, which will enable it to operate in expanded areas, and be equipped with newly developed gear, and will not operate in a fishery, if such operation would cause economic hardship to efficient vessel operators already operating in that fishery.

§ 1403. Approval of application; contract for payment of subsidy.

If the Secretary, in the exercise of his discretion, after notice and opportunity for a public hearing, determines that the granting of a subsidy applied for is reasonably calculated to carry out the purposes of this chapter, he may approve such application and enter into a contract or contracts with the applicant which will provide for payment by the United States of a construction subsidy in accordance with the purposes and provisions of this chapter and in accordance with any other conditions or limitations which may be prescribed by the Secretary. (Pub. L. 86–516, § 3, June 12, 1960, 74 Stat. 212; Pub. L. 88–498, § 2(3), Aug. 30, 1964, 78 Stat. 614; Pub. L. 91–279, § 2, June 12, 1970, 84 Stat. 307.)

AMENDMENTS

1970—Pub. L. 91–279 substituted "notice and opportunity for a public hearing" for "notice and hearing".

1964—Pub. L. 88–498 inserted words "after notice and hearing" preceding "determines."

§ 1404. Repealed. Pub. L. 88–498, § 2(4), Aug. 30, 1964, 78 Stat. 614.

Section, Pub. L. 86–516, § 4, June 12, 1960, 74 Stat. 212, related to the operation of fishing vessels in fisheries suffering injury.

§ 1405. Cost determination and limitation.

(a) Within sixty days after the date of enactment of this subsection, and from time to time thereafter, the Martime[1] Administrator shall survey foreign shipyards to determine the estimated difference between the cost of constructing various classes of new fishing vessels engaged in the fisheries of the United States in such shipyards, and the cost of remodeling various classes of vessels in such shipyards, and the cost of constructing or remodeling such vessels in a shipyard of the United States.

(b) The Secretary may pay, from funds appropriated under this chapter for fiscal year 1970 and subsequent fiscal years with respect to any new fishing vessel for which an application is received in such years and approved under section 1403 of this title, a construction subsidy of not less than 35 per centum and not more than 50 per centum of the lowest responsible bid for the construction of such vessel in a shipyard of the United States, as determined and certified to the Secretary by the Maritime Administrator, excluding the costs, if any, of any feature incorporated in the vessel for national defense uses which costs shall be paid by the Department of Defense in addition to such subsidy. The amount of such subsidy for each such vessel shall be determined and certified to the Secretary by the Maritime Administrator based on the periodic survey conducted under subsection (a) of this section.

(c) The Secretary may pay, from funds appropriated under this chapter for fiscal year 1970 and subsequent fiscal years with respect to any vessel for which an application is received in such years and approved under section 1403 of this title for the remodeling of any vessel, a construction subsidy of not more than 35 per centum of the lowest responsible bid for the remodeling of such vessel as a fishing vessel in a shipyard of the United States, as determined and certified to the Secretary by the Maritime Administrator, excluding the costs, if any, of any feature incorporated in the vessel for national defense uses which costs shall be paid by the Department of Defense in addition to such subsidy. The amount of such subsidy of each such vessel shall be determined and certified to the Secretary by the Maritime Administrator based on the periodic survey conducted under subsection (a) of this section. (Pub. L. 86–516, 5, June 12, 1960, 74 Stat. 213; Pub. L. 88–498, § 2(5), Aug. 30, 1964, 78 Stat. 614; Pub. L. 91–279, § 3, June 12, 1970, 84 Stat. 307.)

AMENDMENTS

1970—Pub. L. 91–279, in rewriting existing paragraph, enacted provisions designated as subsec. (a) and providing for survey of foreign shipyards to determine estimated difference between construction and remodeling costs in foreign as compared with United States shipyards; incorporated in provisions designated as subsec. (b) provisions of existing paragraph for a construction subsidy for construction of fishing vessels with Defense Department payments for features for national defense uses, prescribed minimum construction subsidy payment of 35 per centum of lowest responsible bid for construction of such vessel in a United States shipyard, and provided for payment from appropriated funds and for determination of amount of subsidy on basis of the periodic survey; and enacted provisions designated as subsec. (c) for a con-

[1] So in original. The term should read "Maritime".

struction subsidy for remodeling of fishing vessels, making applicable provisions of existing paragraph for Defense Department payments for features for national defense uses.

1964—Pub. L. 88–498 substituted "50 per cent" for "33⅓ per centum."

§ 1406. Supervision of construction; submission of plans to Secretary of Defense.

Any fishing vessel for which a construction subsidy is paid under this chapter shall be constructed under the supervision of the Maritime Administrator. The Maritime Administrator shall submit the plans and specifications for the proposed vessel to the Department of Defense for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of Defense approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Administrator. No construction subsidy shall be paid by the Secretary under this chapter unless all contracts between the applicant for such subsidy and the shipbuilder who is to construct such vessel contain such provisions with respect to the construction of the vessel as the Maritime Administrator determines necessary to protect the interests of the United States. (Pub. L. 86–516, § 6, June 12, 1960, 74 Stat. 213.)

§ 1407. Conditions of construction.

All construction with respect to which a construction subsidy is granted under this chapter shall be performed in a shipyard in the United States as a result of competitive bidding, after due advertising, with the rights reserved in the applicant, and in the Maritime Administrator, to disapprove any or all bids. Beginning on the date of enactment of this sentence, if the applicant disapproves the lowest responsible domestic bid certified by the Maritime Administrator for convenience or other reasons, the Secretary may permit the applicant to accept another responsible domestic bid and agree to pay a construction subsidy under subsection (b) or (c) of section 1405 of this title which shall not exceed the amount the Secretary would have paid if the applicant had accepted the lowest responsible domestic bid. In all such construction the shipbuilder, subcontractor, material men, and suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, and manufacture of the United States as defined in section 1401(k) of Title 19. No shipbuilder shall be deemed a responsible builder unless he possesses the experience, ability, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. The submitted bid shall be accompanied by all detailed estimates on which it is based, and the Maritime Administrator may require that the builder or any subcontractor submit any other pertinent data relating to such bids. (Pub. L. 86–516, § 7, June 12, 1960, 74 Stat. 213; Pub. L. 91–279, § 4, June 12, 1970, 84 Stat. 308.)

AMENDMENTS

1970—Pub. L. 91–279 inserted provision for applicant's acceptance of another responsible domestic bid (upon disapproval of lowest responsible domestic bid for convenience or other reasons) and agreement to pay a construction subsidy which shall not exceed the amount the Secretary would have paid if the applicant had accepted the lowest responsible domestic bid.

§ 1408. Acquisition of ownership by United States; payment for vessel; finality of determination.

(a) Every contract executed by the Secretary pursuant to section 1403 of this title shall provide that in the event the United States shall, through purchase or requisition, acquire ownership of any fishing vessel on which a construction subsidy was paid, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon) less the depreciated amount of construction subsidy theretofore paid incident to the construction of such vessel, or the fair and reasonable scrap value of such vessel as determined by the Maritime Administrator, whichever is the greater. Such determination shall be final. In computing the depreciated value of such vessel, depreciation shall be computed on each vessel on the schedule accepted or adopted by the Internal Revenue Service for income tax purposes.

(b) The provisions of section 1402 of this title and subsection (a) of this section relating to the requisition or the acquisition of ownership by the United States shall run with the title of each fishing vessel and be binding on all owners thereof. (Pub. L. 86–516, § 8, June 12, 1960, 74 Stat. 214.)

§ 1409. Transfer of vessels to other fisheries; vessels operated contrary to provisions of chapter; repayments.

The Secretary, in the exercise of his discretion, after notice and a public hearing, may approve the transfer of any vessel constructed with the aid of a subsidy to another fishery when, as determined by the Secretary, the operations of such vessel are shown to be uneconomical or less economical either because of an actual decline of the resource in the particular fishery or fisheries in which such vessel operates, or because of changed market conditions or a combination of these factors, and where he determines that such transfer would not cause economic hardship to operators of efficient vessels already operating in the fishery to which the vessel would be transferred, or where he determines that such transfer would enable such vessel to operate in a newly developed fishery not yet utilized to its capacity by operators of efficient vessels. If any fishing vessel constructed with the aid of a construction subsidy in accordance with the provisions of this chapter, is operated during its useful life, as determined by the Secretary, contrary to the provisions of this chapter or any regulations issued thereunder, the owner of such vessel shall repay to the Secretary, in accordance with such terms and conditions as the Secretary shall prescribe an amount not to exceed the total depreciated construction subsidy paid by the Secretary pursuant to this chapter and this

shall constitute a maritime lien against such vessel. The obligations under this section shall run with the title to the vessel. (Pub. L. 86–516, § 9, June 12, 1960, 74 Stat. 214; Pub. L. 88–498, § 2(6), Aug. 30, 1964, 78 Stat. 614; Pub. L. 91–279, § 5, June 12, 1970, 84 Stat. 308.)

AMENDMENTS

1970—Pub. L. 91–279, in amending first sentence, provide for "public" hearing and for transfer of vessels because of actual decline of the resource in the particular fishery or fisheries in which vessel operates rather than actual decline in the particular fishery for which vessel was designed, because of changed market conditions or combination of stated factors, and where Secretary determines that the transfer would enable the vessel to operate in a newly developed fishery not yet utilized to its capacity by operators of efficient vessels.

1964—Pub. L. 88–498 authorized the Secretary to approve the transfer of a vessel constructed with the aid of a construction subsidy, whose operations have become uneconomical or less economical because of an actual decline in the particular fishery for which it was designed, to another fishery where he determines that such transfer would not cause economic hardship or injury to efficient vessel operators already operating in that fishery, substituted provisions requiring repayment, if any fishing vessel constructed with the aid of a subsidy is operated during its useful life contrary to the provisions of this chapter or regulations, of an amount not more than the total depreciated construction subsidy, for provisions which required repayment, if any fishing vessel was operating in any fishery other than the particular fishery for which it was designed, of an amount which bears the same proportion to the total construction subsidy paid with respect to such vessel as the proportion that the number of years during which such vessel was not operated in the fishery for which it was designed bears to the total useful life of such vessel, and inserted provisions making such repayment a maritime lien against the vessel.

§ 1410. Rules and regulations.

The Secretary shall make such rules and regulations as may be necessary to carry out the purposes of this chapter. (Pub. L. 86–516, § 10, June 12, 1960, 74 Stat. 214.)

§ 1411. Definitions.

As used in this chapter the terms—

(1) "Secretary" means the Secretary of the Interior,

(2) "fishing vessel" means any vessel designed to be used in catching fish, processing or transporting fish loaded on the high seas, or any vessel outfitted for such activity,

(3) "citizen of the United States" includes a corporation, partnership, or association if it is a citizen of the United States within the meaning of section 802 of this title, and the amount of interest required to be owned by a citizen of the United States shall be at least 75 per centum.

(4) "construction" includes designing, inspecting, outfitting, and equipping,

(5) "remodeling" includes the construction through the conversion or reconditioning of any vessel to a fishing vessel and through the rebuilding of any existing fishing vessel, and

(6) "Maritime Administrator" means the Maritime Administrator in the Department of Commerce.

(Pub. L. 86–516, § 11, June 12, 1960, 74 Stat. 214; Pub. L. 91–279, § 6, June 12, 1970, 84 Stat. 308.)

AMENDMENTS

1970—Par. (3). Pub. L. 91–279, § 6(a), included in definition of "citizen of the United States" provision that the amount of interest required to be owned by a citizen shall be at least 75 per centum.

Par. (5). Pub. L. 91–279, § 6(b), added par. (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 91–279, § 6(b), redesignated former par (5) as (6).

§ 1412. Authorization of appropriations.

There is authorized to be appropriated for the fiscal years 1970, 1971, and 1972, $20,000,000 per fiscal year to carry out this chapter. Such sums are authorized without fiscal year limitation. (Pub. L. 86–516, § 12, June 12, 1960, 74 Stat. 214; Pub. L. 88–498, § 2(7), Aug. 30, 1964, 78 Stat. 614; Pub. L. 91–279, § 7, June 12, 1970, 84 Stat. 308.)

AMENDMENTS

1970—Pub. L. 91–279 substituted appropriations authorization of $20,000,000 per fiscal year for fiscal years 1970, 1971, and 1972, for prior authorization of not more than $10,000,000 annually and authorized such sums without fiscal year limitation.

1964—Pub. L. 88–498 substituted "$10,000,000" for "$2,500,000."

§ 1413. Termination date.

No application for a subsidy for the construction of a fishing vessel may be accepted by the Secretary after June 30, 1972. (Pub. L. 86–516, § 13, June 12, 1960, 74 Stat. 214; Pub. L. 88–498, § 2(8), Aug. 30, 1964, 78 Stat. 614. Pub. L. 91–279, § 8, June 12, 1970, 84 Stat. 309.)

AMENDMENTS

1970—Pub. L. 91–279 substituted "1972" for "1969".

1964—Pub. L. 88–498 substituted "may be accepted by the Secretary after June 30, 1969" for "may be accepted by the Secretary after the day which is three years after June 12, 1960."

3. Corporation as "Citizen" for Purposes of Operating U.S. Fishing Vessels

46 U.S.C. 883–1

§ 883–1. Corporation as citizen; fisheries and transportation of merchandise or passengers between points in United States; parent and subsidiary corporations; domestic-built vessels; certificate; surrender of documents on change in status.

Notwithstanding any other provision of law, a corporation incorporated under the laws of the United States or any State, Territory, District, or possession thereof, shall be deemed to be a citizen of the United States for the purposes of and within the meaning of that term as used in sections 316, 808, 835 and 883 of this title, and the laws relating to the documentation of vessels, if it is established by a certificate filed with the Secretary of the Treasury as hereinafter provided, that—

(a) a majority of the officers and directors of such corporation are citizens of the United States;

(b) not less than 90 per centum of the employees of such corportation are residents of the United States;

(c) such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any Territory, District, or possession thereof;

(d) the aggregate book value of the vessels owned by such corporation does not exceed 10 per centum of the aggregate book value of the assets of such corporation; and

(e) such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 per centum of the raw materials used or sold in its operations

but no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including Territories, Districts, and possessions thereof, embraced within the coastwise laws, except as a service for a parent or subsidiary corporation and except when such vessel is under demise or bareboat charter at prevailing rates for use otherwise than in the domestic noncontiguous trades from any such corporation to a common or contract carrier subject to chapter 12 of title 49, which otherwise qualifies as a citizen under section 2 of the Shipping Act, 1916, as amended, and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

As used herein (1), the term "parent" means a corporation which controls, directly or indirectly, at least 50 per centum of the voting stock of such corporation, and (2), the term "subsidiary" means a corporation not less than 50 per centum of the voting stock of which is controlled, directly or indirectly, by such corporation or its parent, but no corporation shall be deemed to be a "parent" or "subsidiary" hereunder unless it is incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, and there has been filed with the Secretary of the Treasury a certificate as hereinafter provided.

Vessels built in the United States and owned by a corporation meeting the conditions hereof which are non-self-propelled or which, if self-propelled, are of less than five hundred gross tons shall be entitled to documentation under the laws of the United States, and except as restricted by this section, shall be entitled to engage in the coastwise trade and, together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States.

A corporation seeking hereunder to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States shall file with the Secretary of the Treasury of the United States a certificate under oath, in such form and at such times as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such corporation complies with the conditions of this section above set forth. A "parent" or "subsidiary" of such corporation shall likewise file with the Secretary of the Treasury a certificate under oath, in such form and at such time as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such "parent" or "subsidiary" complies with the conditions of this section above set forth, before such corporation may transport any merchandise or passengers for such parent or subsidiary. If any material matter of fact alleged in any such certificate which, within the knowledge of the party so swearing is not true, there shall be a forfeiture of the vessel (or the value thereof) documented or operated hereunder in respect to which the oath shall have been made. If any vessel shall transport merchandise for hire in violation of this section, such merchandise shall be forfeited to the United States. If any vessel shall transport passengers for hire in violation of this section, such vessel shall be subject to a penalty of $200 for each passenger so transported. Any penalty or forfeiture incurred under this section may be remitted or mitigated by the Secretary of the Treasury under the provisions of section 7 of this title.

Any corporation which has filed a certificate with the Secretary of the Treasury as provided for herein shall cease to be qualified under this section if there is any change in its status whereby it no longer meets the conditions above set forth, and any documents theretofore issued to it, pursuant to the provisions of this section, shall be forthwith surrendered by it to the Secretary of the Treasury. (June 5, 1920, ch. 250, § 27A, as added Sept. 2, 1958, Pub. L. 85-902, 72 Stat. 1736.)

4. Departure of Vessels During a War

18 U.S.C. 965-967

§ 965. Verified statements as prerequisite to vessel's departure.

(a) During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall, in addition to the facts required by sections 91, 92, and 94 of Title 46 to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the collector of customs for the

district wherein such vessel is then located a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the collector like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

The Secretary of the Treasury is authorized to promulgate regulations upon compliance with which vessels engaged in the coastwise trade or fisheries or used solely for pleasure may be relieved from complying with this section. (June 25, 1948, ch. 645, 62 Stat. 747.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., §§ 34, 36 (June 15, 1917, ch. 30, title V, §§ 4, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U. S. C., 1940 ed.

Words "within the United States" were substituted for "within the jurisdiction" etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

Words in subsection (a), referring to title 46, sections 91, 92, and 94, "each of which sections is hereby declared to be and is continued in full force and effect," were omitted as surplusage.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

The final paragraph of the revised section was added on advice of the Treasury Department, to conform with administrative practice and because of the unnecessary burden upon domestic commerce had the provisions of this section been enforced against coastwise, fishing, and pleasure vessels.

Minor changes of phraseology were made.

§ 966. Departure of vessel forbidden for false statements.

(a) Whenever it appears that the vessel is not entitled to clearance or whenever there is reasonable cause to believe that the additional statements under oath required in section 965 of this title are false, the collector of customs for the district in which the vessel is located may, subject to review by the head of the department or agency charged with the administration of laws relating to clearance of vessels, refuse clearance to any vessel, domestic or foreign, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, forbid the departure of the vessel from the port or from the United States. It shall thereupon be unlawful for the vessel to depart.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States. (June 25, 1948, ch. 645, 62 Stat. 747.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., §§ 35, 36 (June 15, 1917, ch. 30, title V, §§ 5, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U. S. C., 1940 ed.

Mandatory punishment provision was rephrased in the alternative.

The phrase "by the head of the department or agency charged with the administration of laws relating to clearance of vessels," was substituted for "by the Secretary of Commerce" in view of Executive Order No. 9083 (F. R. 1609) transferring functions to the Commissioner of Customs.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Minor changes of phraseology were made.

§ 967. Departure of vessel forbidden in aid of neutrality.

(a) During a war in which the United States is a neutral nation, the President, or any person authorized by him, may withhold clearance from or to any vessel, domestic or foreign, or, by service of formal notice upon the owner, master, or person in command or in charge of any domestic vessel not required to secure clearances, may forbid its departure from port or from the United States, whenever there is reasonable cause to believe that such vessel is about to carry fuel, arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a foreign belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations. It shall thereupon be unlawful for such vessel to depart.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States. (June 25, 1948, ch. 645, 62 Stat. 748.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., §§ 31, 36 (June 15, 1917, ch. 30, title V, §§ 1, 6, 40 Stat. 221, 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U. S. C., 1940 ed., with minor changes in translations and phraseology.

Mandatory punishment provision was rephrased in the alternative.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Changes in phraseology were also made.

5. Duty of Fishing Vessels to Keep Nets From Cables

47 U.S.C. 25

§ 25. Fishing vessels; duty to keep nets from cables.

The master of any fishing vessel who shall not keep his implements or nets at a distance of at least one nautical mile from a vessel engaged in laying or repairing a cable; or the master of any fishing vessel who shall not keep his implements or nets at a distance of at least a quarter of a nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken, shall be guilty of a misdemeanor, and on conviction thereof, shall be liable to imprisonment for a term not exceeding ten days, or to a fine not exceeding $250, or to both such fine and imprisonment, at the discretion of the court. Fishing vessels, on perceiving or being able to perceive the said signals displayed on a telegraph ship, shall be allowed such time as may be necessary to obey the notice thus given, not exceeding twenty-four hours, during which period no obstacle shall be placed in the way of their operations. (Feb. 29, 1888, ch. 17, § 5, 25 Stat. 42.)

6. Employment of Certain Foreign Citizens on the Vessel *Seafreeze Atlantic*

P.L. 94–150 (89 Stat. 807)

AN ACT

To authorize the employment of certain foreign citizens on the vessel *Seafreeze Atlantic*, Official Number 517242.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that the purposes and objectives of the United States Fishing Fleet Improvement Act, as amended (46 U.S.C. 1401–1413) are not being fulfilled in the case of the large stern trawler *Seafreeze Atlantic*, Official Number 517242 (hereafter referred to in this Act as the "*Seafreeze Atlantic*"), a vessel of advanced design built under the provisions of that Act, because of the unavailability of skilled United States citizens or skilled aliens legally domiciled in the United States who can be employed as fish processors and fishermen aboard such vessel.

SEC. 2. (a) Notwithstanding any requirement of item (5), section 2, of the United States Fishing Fleet Improvement Act, of any other provision of law, or of any provision of any contract to which the United States is a party, during the four-year period beginning on the date of the enactment of this Act, the owner of the *Seafreeze Atlantic* may employ foreign citizens as crew members of such vessel for service as fish processors and fishermen if at all times during such four-year period—

(1) the master and all of the officers of the vessel are citizens of the United States;

(2) citizens of the United States and aliens legally domiciled in the United States comprise not less than 40 percent of the crew;

(3) any foreign citizen so employed is only used as a fisherman or fish processor aboard the vessel; and

(4) the owner of the vessel undertakes to hire and train United States citizens or aliens legally domiciled in the United States as fish processors or fishermen aboard the vessel in order to assure a future supply of available United States citizens or aliens legally domiciled in the United States who will be qualified as fish processors or fishermen aboard advanced design trawlers.

(b) If at any time during such four-year period the Secretary of Commerce finds that the owner of the *Seafreeze Atlantic* is not in compliance with one or more of the conditions set forth in paragraphs (1) through (4) of subsection (a), the Secretary may prohibit the owner from employing foreign citizens as crew members of such vessel for such period of time as the Secretary deems appropriate.

SEC. 3. Section 2(a) of this Act shall cease to apply at the close of the four-year period referred to in such section; except that if the owner of the *Seafreeze Atlantic* provides evidence satisfactory to the Secretary of Commerce that—

(1) qualified fish processors or fishermen who are citizens of the United States or aliens legally domiciled in the United States will not be available in sufficient number for employment on the vessel after the colse of such period;

(2) he has instituted and will continue a program to train United States citizens or legally domiciled aliens as fish processors or fishermen; and

(3) he is making satisfactory progress, as determined by the Secretary, in employing only United States citizens or legally domiciled aliens on the vessel;

the Secretary of Commerce may permit the *Seafreeze Atlantic* to be operated with fishermen or fish processors who are foreign citizens for such additional periods and under such conditions as he deems appropriate; except that the conditions set forth in paragraphs (1), (2), and (3) of section 2(a) shall apply during any such additional period.

SEC. 4. The provisions of this Act shall not be construed as an amendment of the United States

Fishing Fleet Improvement Act, except to the extent applicable to *Seafreeze Atlantic*, and any contract with the United States entered into before the date of the enactment of this Act with respect to the construction and operation of such vessel shall continue in full force and effect except that the Secretary of Commerce may amend any such contract in such a manner as he deems necessary in order to implement the provisions of this Act. The Secretary may impose such conditions as may be necessary to assure that the provisions of this Act will be complied with by the owner of the *Seafreeze Atlantic* and may undertake to amend appropriately any documents executed in connection with the construction and operation of such vessel, but if the owner does not consent to any such amendment, the Act shall cease to apply.

7. Enforcement of Convention for Safety of Life at Sea, 1960

Ex. Order 11239

(See Executive Order 11239 under title III *Executive Orders*)

8. Exclusion From Foreign Aid of Countries Seizing United States Fishing Vessels

22 U.S.C. 2370(o); 2753(b)

§ 2370. Prohibitions against furnishing assistance.

(o) Exclusion from assistance of countries seizing or imposing penalties or sanctions against United States fishing vessels.

In determining whether or not to furnish assistance under this chapter, consideration shall be given to excluding from such assistance any country which hereafter seizes, or imposes any penalty or sanction against, any United States fishing vessel on account of its fishing activities in international waters. The provisions of this subsection shall not be applicable in any case governed by international agreement to which the United States is a party.

§ 2753. Eligibility; Presidential waiver; report to Congress.

(b) No sales, credits, or guaranties shall be made or extended under this chapter to any country during a period of one year after such country seizes, or takes into custody, or fines an American fishing vessel for engaging in fishing more than twelve miles from the coast of that country. The President may waive the provisions of this subsection when he determines it to be important to the security of the United States or he receives reasonable assurances from the country involved that future violations will not occur, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate. The provisions of this subsection shall not be applicable in any case governed by an international agreement to which the United States is a party. (Pub. L. 90–629, ch. 1, § 3, Oct. 22, 1968, 82 Stat. 1322; Pub. L. 91–672, § I, Jan. 12, 1971, 84 Stat. 2053.)

AMENDMENTS

1971—Subsec. (b). Pub. L. 91–672 extended the retaliatory measures against countries seizing, taking custody or fining American vessels for fishing outside of twelve miles of their coast, to sales, credits, guaranties, and laid down a period of one year as the extent of such prohibition, and added assurances of future restraint received from such countries as an additional ground for waiver, and provided exception that the prohibition will not apply in cases governed by international agreements to which the United States is a party.

9. Exemption of Fishing Vessels From Requirement That Pursers, Surgeons, and Nurses Be Registered

46 U.S.C. 248

§ 248. Same; vessel of the United States defined.

As used in sections 242 to 247 of this title the term "vessel of the United States" shall mean any vessel registered, enrolled, or licensed under the laws of the United States, but shall not include a fishing or whaling vessel or a yacht. (Aug. 1, 1939, ch. 409, § 8, 53 Stat. 1147.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242, 243, 244, 245, 246, 237 of this title.

10. Exemption From Customs Duties of Supplies for Certain Vessels

19 U.S.C. 1309

§ 1309. Supplies for certain vessels and aircraft.

(a) Exemption from customs duties and internal-revenue tax.

(a) Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

(1) for supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; or

(2) for supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where such trade by foreign vessels is permitted; or

(3) for supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

The provisions for free withdrawals made by this subsection shall not apply to petroleum products for vessels or aircraft in voyages or flights exclusively between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

(b) Drawback.

Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, and articles of domestic manufacture or production, laden as supplies upon any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign vessel or aircraft, shall be considered to be exported within the meaning of the drawback provisions of this chapter.

(c) Articles removed in, or returned to, the United States.

Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 1317 of this title and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

(d) Reciprocal privileges.

The privileges granted by this section and section 1317 of this title in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 1317 shall not apply thereafter in respect of aircraft registered in that foreign country. (June 17, 1930, ch. 497, title III, § 309, 46 Stat. 690; June 25, 1938, ch. 679, § 5 (a), 52 Stat. 1080; July 22, 1941, ch. 314, § 3, 55 Stat. 602; Aug. 8, 1953, ch. 397, § 11 (a), 67 Stat. 514; July 7, 1960, Pub. L. 86–606, § 5(a), 74 Stat. 361.)

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–606 inserted ", or between Hawaii and any other part of the United States or between Alaska and any other part of the United States" following "possessions" wherever appearing, and made the provisions for free withdrawals inapplicable to petroleum products for vessels or aircraft in voyages or flights between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

1953—Subsec. (a). Act Aug. 8, 1953, extended the exemption from payment of duty and internal revenue tax theretofore available to supplies for certain vessels and aircraft withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere to supplies withdrawn from foreign trade zones; accorded free entry for equipment withdrawn for foreign vessels; and enlarged the classes of vessels and aircraft theretofore covered to include all vessels and aircraft operated by the United States.

Subsec. (b). Act Aug. 8, 1953, made technical changes to conform with the changes made by such act in subsec. (a), including insertion of the reference "or from a foreign-trade zone,".

1941—Subsec. (a). Act July 22, 1941, inserted after the words "internal revenue tax" the words "or from any internal revenue bonded warehouse, * * * free of internal revenue tax."

1938—Act June 25, 1938, amended section generally and added subds. (c) and (d).

11. Exemption of Fishing Vessels From Laws Governing Inspection of Steam Vessels

46 U.S.C. 367

§ 367. Seagoing vessels propelled by internal-combustion engines; exemptions.

Existing laws covering the inspections of steam vessels are made applicable to seagoing vessels of three hundred gross tons and over propelled in whole or in part by internal-combustion engines to such extent and upon such conditions as may be required by the regulations of the Commandant of the Coast Guard: *Provided,* That this section shall not apply to any vessel engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industry. As used herein, the phrase "any vessel" engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industries includes cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska which are engaged exclusively in (1) the carriage of cargo to or from vessels in the fishery or a facility used or to be used in the processing or assembling of fishery products, or (2) the transportation of cannery or fishing personnel to or from operating locations, and vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska. The exemptions in the preceding sentence for cannery tender, and fishing tender vessels and vessels used in processing or assembling fishery products shall continue in force until July 11, 1978: *Provided further,* That as to licenses required for masters and engineers operating vessels propelled by internal-combustion engines operating exclusively in the district covering the Hawaiian Islands, said masters and engineers shall be under the jurisdiction of the Coast Guard officials having jurisdiction over said waters, who shall make diligent inquiry as to the character, merits, and qualifications, and knowledge and skill of any master or engineer applying for a license. If the said Coast Guard officials shall be satisfied from personal examination of the applicant and from other proof submitted that the applicant possesses the requisite character, merits, qualifications, knowledge, and skill, and is trustworthy and faithful, they shall grant him a license for the term of five years to operate such vessel under the limits prescribed in the license. The term "seagoing vessels" as used in this section shall be construed to mean vessels which in the usual course of their employment proceed outside the line dividing the inland waters from the high seas as designated and determined under the provisions of section 151 of Title 33. (As amended July 9, 1973, Pub. L. 93–65, § 6(4Z) 87 Stat. 151; Oct. 1, 1974, Pub. L. 93–430, § 6(2), 88 Stat. 1182.)

AMENDMENTS

1974—Pub. L. 93–430, in the first proviso, substituted definition of "any vessel" for "any vessel engaged in the fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industries", and added vessels used in processing, or assembling fishery products in provisions relating to the continuation of exemptions until July 11, 1978.

1973—Pub. L. 93–65 extended termination date for cannery tender or fishery tender vessel exemption from a date five years from July 11, 1968, to a date five years from July 11, 1973.

12. Exemption of Vessels Engaged in Fishing as a Regular Business From Certain Inspections

46 U.S.C. 404

§ 404. Inspection of ferryboats, canal boats, and small craft; regulations; exemptions.

The hulls and boilers of every ferryboat, canal boat, yacht or other small craft of like character propelled by steam, shall be inspected under the provisions of this title. Such other provisions of law for the better security of life as may be applicable to such vessels shall, by the regulations of the Secretary of the department in which the Coast Guard is operating, also be required to be complied with before a certificate of inspection shall be granted, and no such vessel shall be navigated without a licensed engineer and a licensed pilot: *Provided,* That in open steam launches of ten gross tons and under, one person, if duly qualified, may serve in the double capacity of pilot and engineer. All vessels of above fifteen gross tons carrying freight for hire and all vessels of above fifteen gross tons and in excess of sixty-five feet in length carrying passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha, or electric motors, shall be subject to all the provisions of this section relating to the inspection of hulls and boilers and requiring engineers and pilots, and for any violation of the provisions of title 52 of the Revised Statutes applicable to such vessels, or of rules or regulations lawfully established thereunder, and to the extent to which such provisions of law and regulations are so applicable, the said vessels, their masters, officers, and owners shall be subject to the provisions of sec-

tions 494 to 498 of this title, relating to the imposition and enforcement of penalties and the enforcement of law: *Provided, however,* That until June 30, 1956, no vessel registered or licensed as a vessel of the United States of fifteen gross tons or less on December 31, 1953, shall be deemed to be subject to the inspection provisions of this section notwithstanding the fact that such vessel may thereafter be found to have a tonnage in excess of fifteen gross tons, unless such finding results from an alteration in the length, breadth, or depth effected after December 31, 1953: *Provided further,* That no vessel under one hundred and fifty gross tons, owned by or demise chartered to any cooperative or association engaged solely in transporting cargo owned by any one or more of the members of such cooperative or association on a nonprofit basis (1) between places within the inland waters of southeastern Alaska, as defined pursuant to section 151 of Title 33, or (2) between places within said inland waters of southeastern Alaska and Prince Rupert, British Columbia, or (3) between places within said inland waters of southeastern Alaska and places within the inland waters of the State of Washington, as also defined pursuant to such section, via sheltered waters, as defined in article I, of the Treaty between United States and Canada defining certain waters of the west coast of North America as sheltered waters, dated December 9, 1933, shall be deemed to be carrying freight for hire within the meaning of this section. As used herein, the phrase "engaged in fishing as a regular business" includes cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska which are engaged exclusively in (1) the carriage of cargo to or from vessels in the fishery or a facility used or to be used in the processing or assembling of fishery products, or (2) the transportation of cannery or fishing personnel to or from operating locations, and vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska. The exemptions in the preceding sentence for cannery tender, fishing tender vessels and vessels used in processing or assembling of fishery products shall continue in force until July 11, 1978. (As amended July 9, 1973, Pub. L. 93–65, § 6(b), 87 Stat. 151; Oct. 1, 1974, Pub. L. 93–430, § 6(4), 88 Stat. 1183.)

AMENDMENTS

1974—Pub. L. 93–430 added reference to vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, in the definition of "engaged in fishing as a regular business", and in provisions relating to continuation of exemption until July 11, 1978, added reference to vessels used in processing or assembling of fishery products.

1973—Pub. L. 93–65 extended termination date for cannery tender and fishery tender vessel exemption from a date five years from July 11, 1968, to a date five years from July 11, 1973.

13. Federal Ship Mortgage Insurance

46 U.S.C. 1271–1280

§ 1271. Definitions.

As used in this subchapter—

(a) The term "mortgage" includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel of less than twenty-five gross tons), and a mortgage on such a vessel which will become a preferred mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended;

(b) The term "vessel" includes all types, whether in existence or under construction, of passenger cargo and combination passenger-cargo carrying vessels, tankers, tugs, towboats, barges and dredges which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of section 802 of this title, floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels owned by citizens of the United States;

(c) The term "obligation" shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the Secretary of Commerce pursuant to section 1275(d) of this title and obligations eligible for investment of funds under sections 1272 and 1279a(d) of this title), issued for one of the purposes specified in section 1274(a) of this title;

(d) The term "obligor" shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term "obligee" shall mean the holder of an obligation;

(f) The term "actual cost" of a vessel as of any specified date means the aggregate, as determined by the Secretary of Commerce, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such vessel;

(g) The term "depreciated actual cost" of a vessel means the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the Secretary of Commerce,

not to exceed twenty-five years from the date the vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary of Commerce, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary of Commerce; and

(h) The terms "construction," "reconstruction," or "reconditioning" shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping. (As amended Oct. 19, 1972, Pub. L. 92–507, § 1, 86 Stat. 909.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–507 reduced the minimum size requirement for certain vessels from 200 gross tons to 25 gross tons.

Subsec. (b). Pub. L. 92–507 substituted definition of "vessel" for definition of "loan".

Subsec. (c). Pub. L. 92–507 substituted definition of "obligation" for definition of "vessel".

Subsec. (d). Pub. L. 92–507 substituted definition of "obligor" for definition of "mortgagee".

Subsec. (e). Pub. L. 92–507 substituted definition of "obligee" for the definition of "mortgagor".

Subsec. (f). Pub. L. 92–507 struck out the proviso and substituted obligor for mortgagor or borrower.

Subsecs. (g) and (h). Pub. L. 92–507 added subsecs. (g) and (h).

§ 1272. Federal Ship Financing Fund.

There is created a Federal Ship Financing Fund (hereinafter referred to as the Fund) which shall be used by the Secretary of Commerce as a revolving fund for the purpose of carrying out the provisions of this subchapter, and there shall be allocated to such fund the sum of $1,000,000 out of funds made available to the Secretary of Commerce under the appropriation authorized by section 1279 of this title. Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States. (As amended Oct. 19, 1972, Pub. L. 92–507, § 2, 86 Stat. 910.)

AMENDMENTS

1972—Pub. L. 92–507 substituted "Federal Ship Financing Fund" for "Federal Ship Mortgage Insurance Fund", and "Fund" for "fund" in four places.

§ 1273. Authorization of Secretary to guarantee obligations.

(a) Principal and interest.

The Secretary of Commerce, upon application by a citizen of the United States, is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this subchapter.

(b) Security interest.

No obligation shall be guaranteed under this subchapter unless the obligor conveys or agrees to convey to the Secretary of Commerce such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary of Commerce may reasonably require to protect the interests of the United States.

(c) Amount of guarantee; percentage limitation; determination of actual cost of vessel.

The Secretary of Commerce shall not guarantee the principal of obligations in an amount in excess of 75 per centum, or 87½ per centum, whichever is applicable under section 1274 of this title, of the amount, as determined by the Secretary of Commerce which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary of Commerce, unless the obligor creates an escrow fund as authorized by section 1279a of this title, in which case the Secretary of Commerce may guarantee 75 per centum or 87½ per centum, whichever is applicable under section 1274 of this title, of the actual cost of such vessel or vessels.

(d) Pledge of United States.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(e) Proof of obligations.

Any guarantee, or commitment to guarantee, made by the Secretary of Commerce under this subchapter shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable.

(f) Limitation on outstanding amount.

The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed $7,000,000,000. (As amended Oct. 19, 1972, Pub. L. 92–507, § 3, 86 Stat. 910; July 10, 1973, Pub. L. 93–70, § 3, 87 Stat. 168; Nov. 13, 1975, Pub. L. 94–127, § 5, 89 Stat. 681.)

AMENDMENTS

1975—Subsec. (f). Pub. L. 94–127 increased limitation on amount of outstanding obligations from $5,000,000,000 to $7,000,000,000.

1973—Subsec. (f). Pub. L. 93–70 increased limitation on amount of outstanding obligations from $3,000,000,000 to $5,000,000,000.

1972—Subsec. (a). Pub. L. 92–507 incorporated provisions of former subsecs. (a) and (b) into subsec. (a) and substituted provisions authorizing the Secretary to guarantee the payment of principal and interest on the obligation for provisions authorizing the Secretary to insure a mortgage or a loan.

Subsec. (b). Pub. L. 92–507 added subsec. (b). Provisions of former subsec. (b) were incorporated into subsec. (a).

Subsec. (c). Pub. L. 92–507 substituted provisions making the Secretary's determination of actual cost of the vessel conclusive for the purposes of determining the maximum amount which may be guaranteed, for provisions making the mortgagee or lender the beneficiary of insurance contracts.

Subsec. (d). Pub. L. 92–507 substituted provisions pledging the full faith and credit of the United States for payment of all guarantees with interest, for provisions pledging the faith of the United States to the payment of principal and interest of each mortgage and loan.

Subsec. (e). Pub. L. 92–507 added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 92–507 redesignated former subsec. (e) as subsec. (f), and in subsec. (f) as so redesignated, substituted "obligations guaranteed" for "mortgages and loans insured".

§ 1274. Eligibility for guarantee.

(a) Purpose of obligations.

Pursuant to the authority granted under section 1273(a) of this title, the Secretary of Commerce, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel or vessels owned by citizens of the United States which are designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 1244 of this title for purposes of subchapter V of this chapter; (D) in the fishing trade or industry; or (E) with respect to floating drydocks, in the construction, reconstruction, reconditioning, or repair of vessels: *Provided, however*, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing the purchase of vessels theretofore acquired by the Fund under the provisions of section 1275 of this title and reconditioning and reconstructing such vessels;

(3) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to subchapter V of this chapter;

(4) refinancing existing obligations issued for one of the purposes specified in (1), (2), or (3) whether or not guaranteed under this subchapter, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time.

(b) Contents of obligations.

Obligations guaranteed under this subchapter—

(1) shall have an obligor approved by the Secretary of Commerce as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary of Commerce;

(2) subject to the provisions of paragraph (1) of subsection (c) of this section, shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary of Commerce, of the vessel which is used as security for the guarantee of the Secretary of Commerce: *Provided, however*, That in the case of a vessel, the size and speed of which are approved by the Secretary of Commerce, and which is or would have been eligible for mortgage aid for construction under section 1159 of this title (or would have been eligible for mortgage aid under section 1159 of this title except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87½ per centum of such actual cost or depreciated actual cost: *Provided, further*, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost thereof;

(3) shall have maturity dates satisfactory to the Secretary of Commerce but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary of Commerce or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary of Commerce;

(4) shall provide for payments by the obligor satisfactory to the Secretary of Commerce;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary of Commerce determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary of Commerce;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary of Commerce is a delivered vessel, the vessel shall be in class A–1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary of Commerce, with all required certificates,

including but not limited to, marine inspection certificates of the United States Coast Guard, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary of Commerce permits a deferment of such repairs, and shall be tight, stanch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Secretary of Commerce is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in subchapter V of this chapter, and if the Secretary of Commerce approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: *Provided*, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Secretary of Commerce under this subchapter, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the Secretary of Commerce of claims of the obligor under such policies.

(c) Security.

(1) The security for the guarantee of an obligation by the Secretary of Commerce under this subchapter may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary of Commerce under this subchapter may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary of Commerce under this subchapter relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: *Provided*, That the Secretary of Commerce may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) Restrictions.

No commitment to guarantee an obligation shall be made by the Secretary of Commerce unless he finds, at or prior to the time such commitment is made, that the property or project with respect to which the obligation will be executed will be, in his opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, and no obligation, unless made pursuant to a prior commitment, shall be guaranteed unless the Secretary of Commerce finds, at or prior to the time the guarantee becomes effective, that the property or project with respect to which the obligation is executed will be, in his opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources.

(e) Guarantee fees.

The Secretary of Commerce is authorized to fix a fee for the guarantee of an obligation under this subchapter. If the security for the guarantee of an obligation under this subchapter relates to a delivered vessel, such fee shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this title. If the security for the guarantee of an obligation under this subchapter relates to a vessel to be constructed, reconstructed, or reconditioned, such fee shall not be less than one-quarter of 1 per centum per annum nor more than one-half of 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this title. For purposes of this subsection (e), if the security for the guarantee of an obligation under this subchapter relates both to a delivered vessel or vessels and to a vessel or vessels to be constructed, reconstructed, or reconditioned, the principal amount of such obligation shall be prorated in accordance with regulations prescribed by the Secretary of Commerce. Fee payments shall be made by the obligor to the Secretary of Commerce when moneys are first advanced under a guaranteed obligation and at least sixty days prior to each anniversary date thereafter. All fees shall be computed and shall be payable to the Secretary of Commerce under such regulations as the Secretary of Commerce may prescribe.

(f) Investigation of applications.

The Secretary of Commerce shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1279a of this title and for the inspection of such properties during construction, reconstruction, or reconditioning: *Provided*, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(g) Disposition of moneys.

All moneys received by the Secretary of Commerce under the provisions of sections 1271 to 1276 and 1279 of this title shall be deposited in the Fund.

(h) Additional requirements

Obligations guaranteed under this subchapter and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration and subrogation provisions and the issuance of notes by the obligor to the Secretary of Commerce), liens and releases of liens, payments of taxes, and such other matters as the Secretary of Commerce may, in his discretion, prescribe. (As amended Oct. 19, 1972, Pub. L. 92–507, § 3, 86 Stat. 910.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–507 substituted provisions relating to the purposes for which guarantees may be made, for provisions relating to the eligibility of mortgages for insurance.

Subsec. (b). Pub. L. 92–507 substituted provisions relating to the eligibility requirements of obligations for guarantee, for provisions relating to the eligibility of loans for insurance.

Subsec. (c). Pub. L. 92–507 substituted provisions that security for guarantee may relate to more than one vessel, that security may consist of any combination of types of security, and that an obligation may have the latest maturity date permissible for any vessel which serves as security for the government guarantee of the related obligations, for provisions relating to the prior determination of the soundness of the property or project for mortgage or loan.

Subsec. (d). Pub. L. 92–507 incorporated provisions of former subsec. (c) into subsec. (d) and extended provisions of this subchapter to commercial fishing vessels. Provisions of former subsec. (d) were incorporated into subsec. (e).

Subsec. (e). Pub. L. 92–507 incorporated provisions of former subsec. (d) into subsec. (e) and substituted therein provisions authorizing the Secretary to fix a fee for the guarantee of obligations and providing separate formulae for delivered vessels and vessels under construction, for provisions authorizing the Secretary to fix a premium charge for the insurance of mortgages and loans and providing separate formulae for mortgages and loans by reference to section 1273 of this title. Provisions of former subsec. (e) were incorporated into subsec. (f).

Subsec. (f). Pub. L. 92–507 incorporated provisions of former subsec. (e), relating to the collection of investigation fees from applicants for insurance into subsec. (f), and substituted therefor provisions relating to the collection of investigation fees from applicants for guarantee. Provisions of former subsec. (f) incorporated into subsec. (g).

Subsec. (g). Pub. L. 92–507 incorporated provisions of former subsec. (f) into subsec. (g).

Subsec. (h). Pub. L. 92–507 added subsec. (h).

1970—Subsec. (a)(8). Pub. L. 91–469, § 31, inserted "research, or for" preceding "commercial use".

Subsec. (b). Pub. L. 91–469, § 32, inserted in par. (2) "research, or for" preceding "commercial use", substituted in par. (4) "not exceed" for "be less than", and inserted in par. (4) restriction that advance and principal amount of other advances under insured loans outstanding at time of advance shall not exceed 87½ per centum of actual cost of vessel where in the case of the approved vessel the minimum downpayment by the mortgagor required by section 1159 of this title would be 12½ per centum of cost of vessel.

1968—Subsec. (a)(5). Pub. L. 90–341 substituted provision that the maximum interest rates allowed on ship mortgages elibible for insurance coverage be at such rates on the outstanding principle obligation as determined by the Secretary of Commerce to be reasonable, taking into account the prevailing rates and the risks assumed by the Department of Commerce, for provision setting a maximum of 5 per centum per annum, or 6 per centum per annum when the Secretary determined that in certain areas or under special circumstances the mortgage or lending market demanded it.

1960—Subsec. (a)(3). Pub. L. 86–518 substituted "twenty-five years" for "twenty years."

Subsec. (a)(8). Pub. L. 86–685, § 2, inserted cl. (e).

Subsec. (b)(2). Pub. L. 86–685, § 3, inserted cl. (e).

1959—Subsec. (a)(2). Pub. L. 86–123, § 2 substituted "and which is, or in the case of a vessel to be reconstructed or reconditioned would have been, eligible for mortgage aid for construction" for "which is eligible for mortgage aid" in the proviso.

Subsec. (d). Pub. L. 86–127, § 1(3), inserted in two instances "excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this title".

Subsec. (e). Pub. L. 86–127, § 1(4), inserted after "commitments" the words "for services in connection with the escrow fund authorized by section 1279a of this title".

Subsec. (f). Pub. L. 86–123, § 1(3), substituted "sections 1101—1110" for "sections 1101—1109" of Act June 29, 1936, which, for purposes of codification, has been changed to "sections 1271—1279 of this title."

1954—Act Sept. 3, 1954, provided standards of eligibility for both mortgages and loans, set up restrictions, and provided for premium charges.

1953—Subsec. (a)(2). Act Aug. 15, 1953, § 2(1), added "or, in the case * * * National defense features".

Subsec. (a)(8). Act Aug. 15, 1953, § 2(2), added "construction of vessels under subchapter V of this chapter".

Subsec. (a)(8)(c). Act Aug. 15, 1953, § 2(3), extended coverage to vessels engaged in foreign trade.

1950—Subsec. (a). Act Sept. 28, 1950, inserted provisions in pars. (2), (7), and (8), concerning purchase of vessels for use on the Great Lakes pursuant to the Merchant Ship Sales Act of 1946.

1939—Subsec. (a)(3). Act Aug. 4, 1939, included mortgages to secure new loans or advances made to aid financing of vessels designed for use in the fishing trade or industry.

§ 1275. Defaults.

(a) Rights of obligee.

In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this subchapter, the obligee or his agent shall have the right to demand, at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the Secretary of Commerce of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary of Commerce shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: *Provided,* That the Secretary of Commerce shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

(b) Notice of default.

In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary of Commerce, the Secre-

tary of Commerce may notify the obligee or his agent of such default and the obligee or his agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than sixty days from the date of such notice, payment by the Secretary of Commerce of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary of Commerce shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) Secretary to complete, sell or operate property.

In the event of any payment by the Secretary of Commerce under subsection (a) or (b) of this section, the Secretary of Commerce shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary of Commerce shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the Secretary of Commerce.

(d) Cash payments; issuance of notes or obligations.

Any amount required to be paid by the Secretary of Commerce pursuant to subsection (a) or (b) of this section, shall be paid in cash. If at any time the moneys in the Fund authorized by section 1272 of this title are not sufficient to pay any amount the Secretary of Commerce is required to pay by subsection (a) or (b) of this section, the Secretary of Commerce is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of Commerce, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the Fund and redemptions of such notes and obligations shall be made by the Secretary of Commerce from such Fund.

(e) Actions against obligor.

In the event of a default under any guaranteed obligation or any related agreement, the Secretary of Commerce shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary of Commerce shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary of Commerce, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event the Secretary of Commerce shall receive through the sale of property an amount of cash in excess of any payment made to an obligee under subsection (a) or (b) of this section and the expenses of collection of such amounts, he shall pay such excess to the obligor. (As amended Oct. 19, 1972, Pub. L. 92–507, § 3, 86 Stat. 914.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–507 substituted provisions relating to the rights of obligee to demand and receive payment from the Secretary under certain circumstances, for provisions relating to the rights of mortgagee and lender to demand and receive payment under certain circumstances and the authority of the Secretary to terminate the insurance contract by notification to the mortgagee or the lender as the case may be.

Subsec. (b). Pub. L. 92–507 added provisions relating to notification of default to the obligee, and payment of unpaid principal and interest amount, by the Secretary within certain time. Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 92–507 incorporated substantially the provisions of subsec. (d) into subsec. (c). Former subsec. (c) is now covered by subsec. (e).

Subsec. (d). Pub. L. 92–507 incorporated provisions of former subsec. (b) into subsec. (d). Former subsec. (d) is now covered by subsec. (c).

Subsec. (e). Pub. L. 92–507 incorporated provisions of former subsec. (c) relating to actions by the Secretary in the event of defaults by mortgagors and borrowers, into subsec. (e), and substituted therefor provisions relating to actions by the Secretary in the event of defaults by obligors of guaranteed obligations and related agreements. Provisions of former subsec. (e) relating to termination and cancellation of insurance contracts and the incontestability of such contracts except for fraud, duress or mutual mistake of fact are omitted.

1970—Subsec. (d). Pub. L. 91–469 substituted provision for inclusion of interest in the installments on the purchase price remaining unpaid at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding maketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such installments, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance, for prior rate of 3½ per centum per annum on installments of purchase price remaining unpaid.

1958—Subsec. (b). Pub. L. 85–520 authorized the Secretary of Commerce to issue notes or obligations when-

ever the moneys in the Federal Ship Mortgage Insurance Fund are insufficient to pay amounts required to be paid under subsec. (a) of this section.

1956—Subsec. (a) (1), (2). Act Aug. 7, 1956, § 1(e), eliminated "the insured portion of" preceding "the unpaid principal amount", wherever appearing.

Subsec. (c)(1). Act Aug. 7, 1956, § 1(f), substituted "such excess to the borrower" for "to the mortgagee such cash amounts to the extent that the mortgagee has not been made whole through other sources for amounts advanced to the mortgagor but in no event shall such payments to the mortgagee exceed 10 per centum of the unpaid principal amount of mortgage and the interest thereon, and any excess of the amounts thus due the Government and the mortgagee shall be paid to the mortgagor".

Subsec. (c)(2). Act Aug. 7, 1956, § 1(g), substituted "such excess to the borrower" for the words "to the lender such cash amount to the extent that the lender has not been made whole through other sources for amounts advanced to the borrower but in no event shall such payment to the lender exceed 10 per centum of the unpaid principal amount of loan and the interest thereon, and any excess of the amounts thus due the Government and the lender shall be paid to the borrower".

1954—Act Sept. 3, 1954, gave new rights to both borrowers and lenders and set up new foreclosure procedures.

1953—Act Aug. 15, 1953, provided that in the event of a default in payment of either principal or interest, the lender may tender an assignment of the mortgage and all collateral to the Secretary who shall promptly pay the unpaid balance in cash, provided for the foreclosure and repossession of mortgaged vessels; allowed the Secretary to take any necessary steps to minimize the loss, and made all insurance commitments conclusive.

§ 1276. Offenses and penalties.

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that an obligation relating to such loan or advance of credit shall be offered to or accepted by the Secretary of Commerce to be guaranteed, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage relating to an obligation guaranteed by the said Secretary of Commerce, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of said Secretary of Commerce under this subchapter, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income shall be guilty of a misdemeanor and punished as provided under the first paragraph of section 1228 of this title. (As amended Oct. 19, 1972, Pub. L. 92–507, § 3, 86 Stat. 915.)

AMENDMENTS

1972—Pub. L. 92–507 substituted provisions relating to offenses and penalties, for provisions relating to insurance of mortgages securing existing loans and refinancing of existing mortgages.

1960—Pub. L. 86–518 substituted "twenty-five years from the date of the original mortgage" for "the maturity date of the original mortgage" in clauses (1), (2), and (3).

1959—Pub. L. 86–123 inserted "as provided in section 1276a of this title or" following "except" in opening provisions.

1954—Act Sept. 3, 1954, limited a new mortgage for refinancing to the same maturity date as the old mortgage, and added par. (4).

§§ 1276a to 1278. Repealed. Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 910.

Section 1276a, act June 29, 1936, ch. 858, § 1107, as added July 31, 1959, Pub. L. 86–123, § 1(5), 73 Stat. 269, and amended June 12, 1960, Pub. L. 86–518, §§ 1, 7, 74 Stat. 216, related to the authority of the Secretary to make commitments to insure mortgages.

Section 1277, act June 29, 1936, ch. 858, § 1108, formerly § 1107, as added June 23, 1938, ch. 600, § 46, 52 Stat. 973, amended Sept. 3, 1954, ch. 1265, § 7, 68 Stat. 1275, and renumbered July 31, 1959, Pub. L. 86–123, § 1(1), 73 Stat. 269, related to offenses and set the penalties therefor. See section 1276 of this title.

Section 1278, act June 29, 1936, ch. 858, § 1109, formerly § 1108, as added June 23, 1938, ch. 600, § 46, 52 Stat. 973, amended Sept. 3, 1954, ch. 1265, § 8, 68 Stat. 1276, and renumbered July 31, 1959, Pub. L. 86–123, § 1(1), 73 Stat. 269, authorized the promulgation of rules and regulations. See now section 1279b of this title.

§ 1279. Appropriations.

There is authorized to be appropriated the sum of $1,000,000 and such further sums as may be necessary to carry out the provisions of this subchapter. (June 29, 1936, ch. 858, § 1110, formerly § 1109, as added June 23, 1938, ch. 600, § 46, 52 Stat. 973, amended Sept. 3, 1954, ch. 1265, § 9, 68 Stat. 1276, and renumbered July 31, 1959, Pub. L. 86–123, § 1(1), 73 Stat. 269.)

AMENDMENTS

1954—Act Sept. 3, 1954, reenacted section without change.

§ 1279a. Escrow fund.

(a) Creation.

If the proceeds of an obligation guaranteed under this subchapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel or vessels which will serve as security for the guarantee of the Secretary of Commerce, the Secretary of Commerce is authorized to accept and hold, in escrow under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this subchapter whose proceeds are to be so used which is equal to: (i) the excess of the principal amount of all obligations whose proceeds are to be so used over 75 per centum, or 87½ per centum, whichever is applicable under section 1274 of this title, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel or vessels; (ii) with such interest thereon, if any, as the Secretary of Commerce may require: *Provided,* That in the event the security for the guarantee of an obligation by the Secretary of Commerce relates both to a vessel or vessels to be constructed, reconstructed or reconditioned and to a delivered vessel or vessels, the principal amount of such obligation shall be prorated for purposes of this subsection (a) under regulations prescribed by the Secretary of Commerce.

(b) Disbursement prior to termination of escrow agreement.

The Secretary of Commerce shall, as specified in the escrow agreement, disburse the escrow fund to pay amounts the obligor is obligated to pay as interest on such obligations or for the construction, reconstruction, or reconditioning of the vessel or vessels used as security for the guarantee of the Secretary of Commerce under this subchapter, to redeem such obligations in connection with a refinancing under paragraph (4) of section 1274(a) of this title or to pay to the obligor at such times as may be provided for in the escrow agreement any excess interest deposits, except that if payments become due under the guarantee prior to the termination of the escrow agreement, all amounts in the escrow fund at the time such payments become due (including realized income which has not yet been paid to the obligor) shall be paid into the Fund and (i) be credited against any amounts due or to become due to the Secretary of Commerce from the obligor with respect to the guaranteed obligations and (ii) to the extent not so required, be paid to the obligor.

(c) Disbursement upon termination of escrow agreement.

If payments under the guarantee have not become due prior to the termination of the escrow agreement, any balance of the escrow fund at the time of such termination shall be disbursed to prepay the excess of the principal of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel or vessels which serve or will serve as security for such guarantee over 75 per centum or 87½ per centum, whichever is applicable under section 1274 of this title, of the actual cost of such vessel or vessels to the extent paid, and to pay interest on such prepaid amount of principal, and the remainder of such balance of the escrow fund shall be paid to the obligor.

(d) Investment of fund.

The Secretary of Commerce may invest and reinvest all or any part of the escrow fund in obligations of the United States with such maturities that the escrow fund will be available as required for purposes of the escrow agreement.

(e) Payment of income

Any income realized on the escrow fund shall, upon receipt, be paid to the obligor.

(f) Terms of escrow agreement.

The escrow agreement shall contain such other terms as the Secretary of Commerce may consider necessary to protect fully the interests of the United States. (June 29, 1936, ch. 858, § 1108, formerly § 1111, as added July 31, 1959, Pub. L. 86–127, § 1(2), 73 Stat. 272, renumbered and amended Oct. 19, 1972, Pub. L. 92–507, § 5, 86 Stat. 916.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–507 substantially reenacted subsec. (a) and substituted requirement that an escrow fund be created out of proceeds of obligations, for requirement that such fund be created out of sale of bonds.

Subsec. (b). Pub. L. 92–507 substituted provisions for the disbursement of escrow fund to pay certain payments the obligor is obligated to pay, for provisions for the disbursement of such fund to pay certain payments the mortgagor or borrower is obligated to pay.

Subsec. (c). Pub. L. 92–507 substituted provisions for the disbursement of the remainder of funds in the escrow fund to the obligor on the termination of the escrow agreement, for provisions for the disbursement of such funds to the mortgagor or borrower as the case may be.

Subsec. (d). Pub. L. 92–507 substituted "the escrow fund" for "such fund".

Subsec. (e). Pub. L. 92–507 substituted provisions for payment of income to obligor, for provisions for payment of such income to mortgagor or borrower.

Subsec. (f). Pub. L. 92–507 substituted "to protect fully" for "to fully protect".

§ 1279b. Rules and regulations.

The Secretary of Commerce is authorized and directed to make such rules and regulations as may be deemed necessary or appropriate to carry out the purposes and provisions of this subchapter. (June 29, 1936, ch. 858, § 1108, formerly § 1111, as added July 31, 1959, Pub. L. 86–127, § 1(2), 73 Stat. 272, renumbered and amended Oct. 19, 1972, Pub. L. 92–507, § 5, 86 Stat. 917.)

AMENDMENTS

1972—Pub. L. 92–507 substituted authority of the Secretary to make rules and regulations, for provisions relating to insurance of mortgage securing loan for restoration and return of merchant vessel, Kalulani.

§ 1280. Advances to fund.

The Secretary of Commerce is authorized to advance to the Federal Ship Mortgage Insurance Fund from the "Vessel operations revolving fund", such amounts as may be required for the payment, pursuant to section 1275 of this title, of unpaid principal amounts of defaulted mortgages and loans and of unpaid interest thereon: *Provided*, That such advances shall be repaid to the "Vessel operations revolving fund" as soon as practicable consistent with the status of the Federal Ship Mortgage Insurance Fund: *Provided further*, That the total advances outstanding at any one time shall not exceed $10,000,000. (Pub. L. 85–469, title I, § 101, June 25, 1958, 72 Stat. 231.)

14. Fishing Vessels of Alaska, Oregon, and Washington Carrying Flammable Cargo

46 U.S.C. 391a

§ 391a. Vessels carrying certain cargoes in bulk.

(1) Statement of policy.

The Congress hereby finds and declares—

That the carriage by vessels of certain cargoes in bulk creates substantial hazards to life, property, the navigable waters of the United States (including the quality thereof) and the resources contained therein and of the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems and recreational and scenic values, which waters and resources are hereafter in this section referred to as the "marine environment."

That existing standards for the design, construction, alteration, repair, maintenance and operation of such vessels must be improved for the adequate protection of the marine environment.

That it is necessary that there be established for all such vessels documented under the laws of the United States or entering the navigable waters of the United States comprehensive minimum standards of design, construction, alteration, repair, maintenance, and operation to prevent or mitigate the hazards to life, property, and the marine environment.

(2) Vessels included.

All vessels, regardless of tonnage size, or manner of propulsion, and whether self-propelled or not, and whether carrying freight or passengers for hire or not, which are documented under the laws of the United States or enter the navigable waters of the United States, except public vessels other than those engaged in commercial service, that shall have on board liquid cargo in bulk which is—

(A) inflammable or combustible, or

(B) oil, of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, or

(C) designated as a hazardous polluting substance under section 12(a) of the Federal Water Pollution Control Act (33 U.S.C. 1162);

shall be considered steam vessels for the purposes of title 52 of the Revised Statutes of the United States and shall be subject to the provisions thereof: *Provided*, That (i) this section shall not apply to vessels having on board the substances set forth in (A), (B), or (C) above only for use as fuel or stores or to vessels carrying such cargo only in drums, barrels, or other packages;

(ii) nothing contained herein shall be deemed to amend or modify the provisions of section 4 of Public Law 93–397 with respect to certain vessels of not more than five hundred gross tons;

(iii) this section shall not apply to vessels of not more than five thousand gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska and such vessels shall be allowed to have on board inflammable or combustible cargo in bulk to the extent and upon conditions as may be required by the Secretary of the department in which the Coast Guard is operating; and

(iv) this section shall not apply to vessels of not more than five hundred gross tons documented in the service of oil exploitation which are not tank vessels and which would be subject to this section only because of the transfer of fuel from the vessels' own fuel supply tanks to offshore drilling or production facilities.

(3) Rules and regulations.

In order to secure effective provision (A) for vessel safety, and (B) for protection of the marine environment, the Secretary of the department in which the Coast Guard is operating (hereafter referred to in this section as the "Secretary") shall establish for the vessels to which this section applies such additional rules and regulations as may be necessary with respect to the design and construction, alteration, repair, and maintenance of such vessels, including, but not limited to, the superstructures, hulls, places for stowing and carrying such cargo, fittings, equipment, appliances, propulsive machinery, auxiliary machinery, and boilers thereof; and with respect to all materials used in such construction, alteration, or repair; and with respect to the handling and stowage of such cargo, the manner of such handling or stowage, and the machinery and appliances used in such handling and stowage; and with respect to equipment and appliances for life saving, fire protection, and the prevention and mitigation of damage to the marine environment; and with respect to the operation of such vessels; and with respect to the requirements of the manning of such vessels and the duties and qualifications of the officers and crew thereof; and with respect to the inspection of all the foregoing. In establishing such rules and regulations the Secretary may, after hearing as provided in subsection (4), adopt rules of the American Bureau of Shipping or similar American classification society for classed vessels insofar as such rules pertain to the efficiency of hulls and the reliability of machinery of vessels to which this section applies. In establishing such rules and regulations, the Secretary shall give due consideration to the kinds and grades of such cargo permitted to be on board such vessel. In establishing such rules and regulations the Secretary shall, after consultation with the Secretary of Commerce and the Administrator of the Environmental Protection Agency, identify those established for protection of the marine environment and those established for vessel safety.

(4) Adoption of rules and regulations.

Before any rules or regulations, or any alteration, amendment, or repeal thereof, are approved by the Secretary under the provisions of this section, except in an emergency, the Secretary shall (A) consult with other appropriate Federal departments and agencies, and particularly with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, with regard to all rules and regulations for the protection of the marine environment, (B) publish proposed rules and regulations, and (C) permit interested persons an opportunity for hearing. In prescribing rules or regulations, the Secretary shall consider, among other things, (i) the need for such rules or regulations, (ii) the extent to which such rules or regulations will contribute to safety or protection of the marine environment, and (iii) the practicability of compliance therewith, including cost and technical feasibility.

(5) Rules and regulations for safety; inspection; permits; foreign vessels.

No vessel subject to the provisions of this section shall, after the effective date of the rules and regulations for vessel safety established hereunder, have on board such cargo, until a certificate of inspection has been issued to such vessel in accordance with the provisions of title 52 of the Revised Statutes of the United States and until a permit has been endorsed on such certificate of inspection by the Secretary, indicating that such vessel is in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder, and showing the kinds and grades of such cargo that such vessel may have on board or transport. Such permit shall not be endorsed by the Secretary on such certificate of inspection until such vessel has been inspected by the Secretary and found to be in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder. For the purpose of such inspection, approved plans and certificates of class of the American Bureau of Shipping or other recognized classification society for classed vessels may be accepted as evidence of the structural efficiency of the hull and the reliability of the machinery of such classed vessels except as far as existing law places definite responsibility on the Coast Guard. A certificate issued under the provisions of this section shall be valid for a period of time not to exceed the duration of the certificate of inspection on which such permit is endorsed, and shall be subject to revocation by the Secretary whenever he shall find that the vessel concerned does not comply with the conditions upon which such permit was issued: *Provided*, That rules and regulations for vessel safety established hereunder and the provisions of this subsection shall not apply to vessels of a foreign nation having on board a valid certificate of inspection recognized under law or treaty by the United States: *And provided further*, That no permit shall be issued under the provisions of this section authorizing the presence on board any vessel of any of the materials expressly prohibited from being thereon by subsection (3) of section 170 of this title.

(6) Rules and regulations for protection of the marine environment; inspection; certification.

No vessel subject to the provisions of this section shall, after the effective date of rules and regulations for protection of the marine environment, have on board such cargo, until a certificate of compliance, or an endorsement on the certificate of inspection for domestic vessels, has been issued by the Secretary indicating that such vessel is in compliance with such rules and regulations. Such certificate of compliance or endorsement shall not be issued by the Secretary until such vessel has been inspected by the Secretary and found to be in compliance with the rules and regulations for protection of the marine environment established hereunder. A certificate of compliance or an endorsement issued under this subsection shall be valid for a period specified therein by the Secretary and shall be subject to revocation whenever the Secretary finds that the vessel concerned does not comply with the conditions upon which such certificate endorsement was issued.

(7) Rules and regulations for protection of the marine environment relating to vessel design and construction, alteration, and repair; international agreement.

(A) The Secretary shall begin publication as soon as practicable of proposed rules and regulations setting forth minimum standards of design, construction, alteration, and repair of the vessels to which this section applies for the purpose of protecting the marine environment. Such rules and regulations shall, to the extent possible, include but not be limited to standards to improve vessel maneuvering and stopping ability and otherwise reduce the possibility of collision, grounding, or other accident, to reduce cargo loss following collision, grounding, or other accident, and to reduce damage to the marine environment by normal vessel operations such as ballasting and deballasting, cargo handling, and other activities.

(B) The Secretary shall cause proposed rules and regulations published by him pursuant to subsection (7)(A) to be transmitted to appropriate international forums for consideration as international standards.

(C) Rules and regulations published pursuant to subsection (7)(A) shall be effective not earlier than January 1, 1974, with respect to foreign vessels and United States-flag vessels operating in the foreign trade, unless the Secretary shall earlier establish rules and regulations consonant with international treaty, convention, or agreement, which generally address the regulation of similar topics for the protection of the marine environment. In absence of the promulgation of such rules and regulations consonant with international treaty, convention, or agree-

ment, the Secretary shall establish an effective date not later than January 1, 1976, with respect to foreign vessels and United States-flag vessels operating in the foreign trade, for rules and regulations previously published pursuant to this subsection (7) which he then deems appropriate. Rules and regulations published pursuant to subsection (7)(A) shall be effective not later than June 30, 1974, with respect to United States-flag vessels engaged in the coastwise trade.

(D) Any rule or regulation for protection of the marine environment promulgated pursuant to this subsection (7) shall be equally applicable to foreign vessels and United States-flag vessels operating in the foreign trade. If a treaty, convention, or agreement provides for reciprocity of recognition of certificates or other documents to be issued to vessels by countries party thereto, which evidence compliance with rules and regulations issued pursuant to such treaty, convention, or agreement, the Secretary, in his discretion, may accept such certificates or documents as evidence of compliance with such rules and regulations in lieu of the certificate of compliance otherwise required by subsection (6) of this section.

(8) Shipping documents.

Vessels subject to the provisions of this section shall have on board such shipping documents as may be prescribed by the Secretary indicating the kinds, grades, and approximate quantities of such cargo on board such vessel, the shippers and consignees thereof, and the location of the shipping and destination points.

(9) Officers; tankermen; certification.

(A) In all cases where the certificate of inspection does not require at least two licensed officers, the Secretary shall enter in the permit issued to any vessel under the provisions of this section the number of the crew required to be certified as tankermen.

(B) The Secretary shall issue to applicants certificates as tankermen, stating the kinds of cargo the holder of such certificate is, in the judgment of the Secretary, qualified to handle aboard vessels with safety, upon satisfactory proof and examination, in form and manner prescribed by the Secretary, that the applicant is in good physical condition, that such applicant is trained in and capable efficiently to perform the necessary operations aboard vessels having such cargo on board, and that the applicant fulfills the qualifications of tankerman as prescribed by the Secretary under the provisions of this section. Such certificates shall be subject to suspension or revocation on the same grounds and in the same manner and with like procedure as is provided in the case of suspension or revocation of licenses of officers under the provisions of section 239 of this title.

(10) Effective date of rules and regulations.

Except as otherwise provided herein, the rules and regulations to be established pursuant to this section shall become effective ninety days after their promulgation unless the Secretary shall for good cause fix a different time. If the Secretary shall fix an effective date later than ninety days after such promulgation, his determination to fix such a later date shall be accompanied by an explanation of such determination which he shall publish and transmit to the Congress.

(11) Penalties.

(A) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall violate the provisions of this section, or the rules and regulations established hereunder, shall be liable to a civil penalty of not more than $10,000.

(B) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall knowingly and willfully violate the provisions of this section or the rules and regulations established hereunder, shall be subject to a fine of not less than $5,000 or more than $50,000, or imprisonment for not more than five years, or both.

(C) Any vessel subject to the provisions of this section, which shall be in violation of this section or the rules and regulations established hereunder, shall be liable in rem and may be proceeded against in the United States district court for any district in which the vessel may be found.

(12) Injunctive proceedings.

The United States district courts shall have jurisdiction for cause shown to restrain violations of this section or the rules and regulations promulgated hereunder.

(13) Denial of entry.

The Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States to any vessel not in compliance with the provisions of this section or the regulations promulgated thereunder. (As amended July 10, 1972, Pub. L. 92–340, title II, § 201, 86 Stat. 427; Nov. 16, 1973, Pub. L. 93–153, title IV, § 401, 87 Stat. 589; Oct. 1, 1974, Pub. L. 93–430, § 6(3), 88 Stat. 1183.)

AMENDMENTS

1974—Subsec. (2). Pub. L. 93–430 substantially reenacted existing three provisos and redesignated them cls. (i), (ii), and (iv), and added cl. (iii).

1973—Subsec. (7)(C). Pub. L. 93–153 inserted "with respect to foreign vessels and United States-flag vessels operating in the foreign trade," in two places and provided that rules and regulations published pursuant to subsec. (7)(A) be effective not later than June 30, 1974, with respect to United States-flag vessels engaged in the coast-wise trade.

1972—Subsec. (1). Pub. L. 92–340 added subsec. (1). Former subsec. (1) redesignated (2).

Subsec. (2). Pub. L. 92–340 redesignated former subsec. (1) as subsec. (2) and in subsec. (2) so redesignated, expanded the definition of steam vessels to include vessels documented under the laws of the United States or entering the navigable waters of the United States that have on board oil of any kind and other liquid cargo in bulk designated as a hazardous polluting substance, incorporated provisions relating to certain fishing vessels of not more than five hundred tons by reference to section 4 of Pub. L. 90–397, and added exception relating to vessels of not more than five hundred tons engaged in oil exploitation services. Former subsec. (2) redesignated (3).

Subsec. (3). Pub. L. 92–340 redesignated former subsec. (2) as subsec. (3) and in subsec. (3) so redesignated reenacted existing provisions with minor changes such as enumerating the purposes of the rules as vessel safety and protection of marine environment, and substituting Secretary of the Department in which the Coast Guard is operating for Commandant of Coast Guard, and adding provision that in establishing rules and regulations, the Secretary shall consult with the Secretary of Commerce and Administrator of the Environmental Protection Agency and identify the rules established for the protection of the marine environment and those established for vessel safety. Former subsec. (3) redesignated (4).

Subsec. (4). Pub. L. 92–340 redesignated former subsec. (3) as subsec. (4) and in subsec. (4) so redesignated, substituted Secretary for Commandant of Coast Guard, and further substituted elaborate provisions relating to consultation, publication and hearing for simple requirement of notice and hearing. Former subsec. (4) redesignated (5).

Subsec. (5). Pub. L. 92–340 redesignated former subsec. (4) as subsec. (5) and in subsec. (5) so redesignated, substituted "Secretary" for "Coast Guard" in three places, "rules and regulations for vessel safety" for "rules and regulations," "cargo" for "liquid cargo" and "certificate" for "permit" in one place. Former subsec. (5) redesignated (8).

Subsec. (6). Pub. L. 92–340 added subsec. (6). Former subsec. (6) redesignated (9).

Subsec. (7). Pub. L. 92–340 added subsec (7). Former subsec. (7) redesignated (11).

Subsec. (8). Pub. L. 92–340 redesignated former subsec. (5) as subsec. (8), and in subsec. (8) so redesignated, reenacted existing provisions and substituted "Secretary" for "Commandant of the Coast Guard" and "cargo" for "liquid cargo". Former subsec. (8) redesignated (10).

Subsec. (9). Pub. L. 92–340 redesignated former subsec. (6) as subsec. (9) and in subsec. (9) so redesignated, substituted "Secretary" for "Coast Guard" and "Commandant of the Coast Guard", and "cargo" for "liquid cargo".

Subsec. (10). Pub. L. 92–340 redesignated former subsec. (8) as subsec. (10) and in subsec. (10) so redesignated, inserted "Except as otherwise provided herein," preceding "the rules and regulations", substituted "Secretary" for "Commandant of the Coast Guard" and added provision that the Secretary submit an explanation to the Congress when he fixes an effective date later than ninety days.

Subsec. (11). Pub. L. 92–340 redesignated former subsec. (7) as par. (A) of this subsection and in part. (A) so redesignated, substituted civil penalty of not more than $10,000 for penalties of a fine of not more than $1,000 or imprisonment for not more than one year or both fine and imprisonment, and added pars. (B) and (C).

Subsec. (12). Pub. L. 92–340 added subsec. (12).

Subsec. (13). Pub. L. 92–340 added subsec. (13).

15. Fishing Vessels Touching and Trading at Foreign Ports

46 U.S.C. 310–311, 331

§ 310. Permit to touch at foreign port.

Whenever any vessel, licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port. (R. S. § 4364.)

§ 311. Penalty for touching at foreign port without permission.

Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of $500, without having such permission as is directed by section 310 of this title, such vessel, together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture. (R. S. § 4365.)

§ 331. Certain fees abolished.

No fees shall be charged or collected by collectors or other officers of customs, or by Coast Guard officials, for the following services to vessels of the United States, to wit: Measurement of tonnage and certifying the same, except that the compensation and necessary travel and subsistence expenses of the officers so measuring or certifying such vessels at the request of the owners thereof at a place other than a port of entry or a customs station shall be paid by such owners; issuing of license or granting of certificate of registry, record, or enrollment, including all indorsements on the same and oath; indorsement of change of master; certifying and receiving manifest, including master's oath and permit; granting permit to vessels licensed for the fisheries to touch and trade; granting certificate of payment of tonnage dues; recording bill of sale, mortgage, hypothecation or conveyance, or the discharge of such mortgage or hypothecation; furnishing certificate of title; furnishing the crew list; certificate of protection to seamen; bill of health; shipping or discharging of seamen, as provided by title 53 of the Revised Statutes and sections 563 and 646 of this title; apprenticing boys to the merchant service; inspecting, examining, and licensing steam vessels, including inspection certificate and copies thereof; and licensing of master, engineer, pilot, or mate of a vessel. (June 19, 1886, ch. 421, § 1, 24 Stat. 79; Apr. 4, 1888, ch. 61, § 2, 25 Stat. 80; June 25, 1938, ch. 679, § 19(a), 52 Stat. 1087; 1946 Reorg. Plan No. 3, §§ 101—104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

AMENDMENTS

1938—Act June 25, 1938, required owners of vessels to pay compensation and travel and subsistence expenses of officers measuring or certifying vessels at request of owners at a place other than a port of entry or customs station.

16. General Definition of "Vessel"

1 U.S.C. 3

§ 3. "Vessel" as including all means of water transportation.

The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. (July 30, 1947, ch. 388, 61 Stat. 633.)

17. Great Lakes Fishing Steamers—Persons in Addition to Crew

46 U.S.C. 458–459

§ 458. Vessels on Great Lakes carrying persons not passengers.

Any steam vessel engaged in the business of towing vessels, rafts, or water craft of any kind, also steam vessels engaged in oyster dredging and planting, and fishing steamers engaged in food fishing on the Great Lakes and all other inland waters of the United States, and not carrying passengers, may be authorized and licensed by the Coast Guard to carry on board such number of persons, in addition to its crew, as the Coast Guard, in its judgment, shall deem necessary to carry on the legitimate business of such towing, oyster and fishing steamers, not exceeding, however, one person to every net ton of measurement of said steamer: *Provided, however,* That the person so allowed to be carried shall not be carried for hire. (July 9, 1886, ch. 755, § 1, 24 Stat. 129; Feb. 23, 1901, ch. 465, 31 Stat. 800; 1946 Reorg. Plan No. 3, §§ 101—104, eff. July 16, 1946, 11 F. R. 7875, 60 Stat. 1097.)

§ 459. Life preservers.

Every steam vessel licensed under section 458 of this title shall carry and have on board, in accessible places, one life preserver for every person allowed to be carried, in addition to those provided for the crew of such vessel. (July 9, 1886, ch. 755, § 2, 24 Stat. 129; Feb. 23, 1901, ch. 465, 31 Stat. 801.)

18. International Regulations for Preventing Collisions at Sea

33 U.S.C. 1051–1094

Sec.

GENERAL PROVISIONS

§ 1051. Regulations for preventing collisions at sea; proclamation by President; effective date; publication; applicability.

The President is authorized to proclaim the regulations set forth in sections 1061 to 1094 of this title for preventing collisions involving waterborne craft upon the high seas, and in all waters connected therewith. The effective date of such proclamation shall be not earlier than the date fixed by the Inter-Governmental Maritime Consultative Organization for application of such regulations by Governments which have agreed to accept them. Such proclamation, together with the regulations, shall be published in the Federal Register and after the effective date specified in such proclamation such regulations shall have effect as if enacted by statute and shall be followed by all public and private vessels of the United States and by all aircraft of United States registry to the extent therein made applicable. Such regulations shall not apply to the harbors, rivers, and other inland waters of the United States; to the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the Saint Lambert Lock at Montreal in the Province of Quebec, Canada; to the Red River of the North and the rivers emptying into the Gulf of Mexico and their tributaries; nor with respect to aircraft in any territorial waters of the United States. (Pub. L. 88–131, § 1, Sept. 24, 1963, 77 Stat. 194.)

§ 1052. Navy and Coast Guard vessels; exemption regarding lights; feasible conformity to requirements; publication; effective date.

Any requirement of such regulations in respect of the number, position, range of visibility, or arc of visibility of the lights required to be displayed by vessels shall not apply to any vessel of the Navy or of the Coast Guard whenever the Secretary of the Navy or the Secretary of Transportation, in the case of Coast Guard vessels operating under the Department of Transportation, or such official as either may designate, shall find or certify that, by reason of special construction, it is not possible for such vessel or class of vessels to comply with such regulations. The lights of any such exempted vessel or class of vessels, however, shall conform as closely to the requirements of the applicable regulations as the Secretary or such official shall find or certify to be feasible. Notice of such findings or certification and of the character and position of the lights prescribed to be displayed on such exempted vessel or class of vessels shall be published in the Federal Register and in the Notice to Mariners and, after the effective date specified in such notice, shall have effect as part of such regulations. (Pub. L. 88–131, § 2, Sept. 24, 1963, 77 Stat. 194.)

§ 1053. Designation of regulations.

The regulations authorized to be proclaimed under section 1051 of this title are the Regulations for Preventing Collisions at Sea, 1960, approved by the International Conference on Safety of Life at Sea, 1960, held at London from May 17, 1960, to June 17, 1960, and are set out in sections 1061 to 1094 of this title. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 195.)

PRELIMINARY AND DEFINITIONS

§ 1061. Scope of sections 1061 to 1904 (Rule 1).

(a) Watercraft to which applicable.

Sections 1061 to 1094 of this title shall be followed by all vessels and seaplanes upon the high seas and in all waters connected therewith navigable by seagoing vessels, except as provided in section 1092 of this title. Where, as a result of their special construction, it is not possible for seaplanes to comply fully with the provisions of sections 1061 to 1094 of this title specifying the carrying of lights and shapes, these provisions shall be followed as closely as circumstances permit.

(b) Provisions concerning lights; conditions governing compliance.

The provisions of sections 1061 to 1094 of this title concerning lights shall be complied with in all weathers from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the prescribed lights or do not impair their visibility or distinctive character, or interfere with the keeping of a proper lookout. The lights prescribed by such sections may also be exhibited from sunrise to sunset in restricted visibility and in all other circumstances when it is deemed necessary.

(c) Definitions.

In sections 1061 to 1094 of this title, except where the context otherwise requires—

(i) the word "vessel" includes every description of water craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

(ii) the word "seaplane" includes a flying boat and any other aircraft designed to manoeuvre on the water;

(iii) the term "power-driven vessel" means any vessel propelled by machinery;

(iv) every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel;

(v) a vessel or seaplane on the water is "under way" when she is not at anchor, or made fast to the shore, or aground;

(vi) the term "height above the hull" means height above the uppermost continuous deck;

(vii) the length and breadth of a vessel shall be her length overall and largest breadth;

(viii) the length and span of a seaplane shall be its maximum length and span as shown in its certificate of airworthiness, or as determined by measurement in the absence of such certificate;

(ix) vessels shall be deemed to be in sight of one another only when one can be observed visually from the other;

(x) the word "visible", when applied to lights, means visible on a dark night with a clear atmosphere;

(xi) the term "short blast" means a blast of about one second's duration;

(xii) the term "prolonged blast" means a blast of from four to six seconds' duration;

(xiii) the word "whistle" means any appliance capable of producing the prescribed short and prolonged blasts;

(xiv) the term "engaged in fishing" means fishing with nets. lines or trawls but does not include fishing with trolling lines.

(Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 195.)

LIGHTS AND SHAPES

§ 1062. Requirements when under way (Rule 2).

(a) Power-driven vessels.

A power-driven vessel when under way shall carry—

(i) On or in front of the foremast, or if a vessel without a foremast then in the forepart of the vessel, a white light so constructed as to show an unbroken light over an arc of the horizon of 225 degrees (20 points of the compass), so fixed as to show the light 112½ degrees (10 points) on each side of the vessel, that is, from right ahead to 22½ degrees (2 points) abaft the beam on either side, and of such a character as to be visible at a distance of at least 5 miles.

(ii) Either forward or abaft the white light prescribed in clause (i) of this subsection a second white light similar in construction and character to that light. Vessels of less than 150 feet in length shall not be required to carry this second white light but may do so.

(iii) These two white lights shall be so placed in a line with and over the keel that one shall be at least 15 feet higher than the other and in such a position that the forward light shall always be shown lower than the after one. The horizontal distance between the two white lights shall be at least three times the vertical distance. The lower of these two white lights or, if only one is carried, then that light, shall be placed at a height above the hull of not less than 20 feet, and, if the breadth of the vessel exceeds 20 feet, then at a height above the hull not less than such breadth, so however that the light need not be placed at a greater height above the hull than 40 feet. In all circumstances the light or lights, as the case may be, shall be so placed as to be clear of and above all other lights and obstructing superstructures.

(iv) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 112½ degrees (10 points of the compass), so fixed as to show the light from right ahead to 22½ degrees (2 points) abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles.

(v) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 112½ degrees (10 points of the compass), so fixed as to show the light from right ahead to 22½ degrees (2 points) abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles.

(vi) The said green and red sidelights shall be fitted with inboard screens projecting at least 3 feet forward from the light, so as to prevent these lights from being seen across the bows.

(b) Seaplanes.

A seaplane under way on the water shall carry—

(i) In the forepart amidships where it can best be seen a white light, so constructed as to show an unbroken light over an arc of the horizon of 220 degrees of the compass, so fixed as to show the light 110 degrees on each side of the seaplane, namely, from right ahead to 20 degrees abaft the beam on either side, and of such a character as to be visible at a distance of at least 3 miles.

(ii) On the right or starboard wing tip a green light, so constructed as to show an unbroken light over an arc of the horizon of 110 degrees of the compass, so fixed as to show the light from right ahead to 20 degrees abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles.

(iii) On the left or port wing tip a red light, so constructed as to show an unbroken light over an arc of the horizon of 110 degrees of the compass, so fixed as to show the light from right ahead to 20 degrees abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles.

(Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 196.)

§ 1063. Towing or pushing other vessels or seaplanes (Rule 3).

(a) A power-driven vessel when towing or pushing another vessel or seaplane shall, in addition to her sidelights, carry two white lights in a vertical line one over the other, not less than 6 feet apart, and when towing and the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet, shall carry three white lights in a vertical line one over the other, so that the upper and lower lights shall be the same distance from, and not less than 6 feet above or below, the middle light. Each of these lights shall be of the same construction and character and one of them shall be carried in the same position as the white light prescribed in section 1062 (a)(i) of this title. None of these lights shall be carried at a height of less than 14 feet above the hull. In a vessel with a single mast, such lights may be carried on the mast.

(b) The towing vessel shall also show either the stern light prescribed in section 1070 of this title or in lieu of that light a small white light abaft the funnel or aftermast for the tow to steer by, but such light shall not be visible forward of the beam.

(c) Between sunrise and sunset a power driven vessel engaged in towing, if the length of tow exceeds 600 feet, shall carry, where it can best be seen, a black diamond shape at least 2 feet in diameter.

(d) A seaplane on the water, when towing one or more seaplanes or vessels, shall carry the lights prescribed in section 1062(b) (i), (ii), and (iii) of this title; and, in addition, she shall carry a sec-

ond white light of the same construction and character as the white light prescribed in section 1062 (b)(i) of this title, and in a vertical line at least 6 feet above or below such light. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 197.)

§ 1064. Vessels and seaplanes not under command, and vessels engaged in certain operations (Rule 4).

(a) A vessel which is not under command shall carry, where they can best be seen, and, if a power-driven vessel, in lieu of the lights prescribed in section 1062(a) (i) and (ii) of this title, two red lights in a vertical line one over the other not less than 6 feet apart, and of such a character as to be visible all round the horizon at a distance of at least 2 miles. By day, she shall carry in a vertical line one over the other not less than 6 feet apart, where they can best be seen, two black balls or shapes each not less than 2 feet in diameter.

(b) A seaplane on the water which is not under command may carry, where they can best be seen, and in lieu of the light prescribed in section 1062(b)(i) of this title, two red lights in a vertical line, one over the other, not less than 3 feet apart, and of such a character as to be visible all round the horizon at a distance of at least 2 miles, and may by day carry in a vertical line one over the other not less than 3 feet apart, where they can best be seen, two black balls or shapes, each not less than 2 feet in diameter.

(c) A vessel engaged in laying or in picking up a submarine cable or navigation mark, or a vessel engaged in surveying or underwater operations, or a vessel engaged in replenishment at sea, or in the launching or recovery of aircraft when from the nature of her work she is unable to get out of the way of approaching vessels, shall carry, in lieu of the lights prescribed in section 1062(a) (i) and (ii), or section 1067(a)(i) of this title, three lights in a vertical line one over the other so that the upper and lower lights shall be the same distance from, and not less than 6 feet above or below, the middle light. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon at a distance of at least 2 miles. By day, she shall carry in a vertical line one over the other not less than 6 feet apart, where they can best be seen, three shapes each not less than 2 feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

(d) (i) A vessel engaged in minesweeping operations shall carry at the fore truck a green light, and at the end or ends of the fore yard on the side or sides on which danger exists, another such light or lights. These lights shall be carried in addition to the light prescribed in section 1062(a)(i) or section 1067(a)(i) of this title, as appropriate, and shall be of such a character as to be visible all round the horizon at a distance of at least 2 miles. By day she shall carry black balls, not less than 2 feet in diameter, in the same position as the green lights.

(ii) the showing of these lights or balls indicates that it is dangerous for other vessels to approach closer than 3,000 feet astern of the minesweeper or 1,500 feet on the side or sides on which danger exists.

(e) The vessels and seaplanes referred to in this section, when not making way through the water, shall show neither the coloured side-lights nor the stern light, but when making way they shall show them.

(f) The lights and shapes prescribed in this section are to be taken by other vessels and seaplanes as signals that the vessel or seaplane showing them is not under command and cannot therefore get out of the way.

(g) These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in section 1093 of this title. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 197.)

§ 1065. Sailing vessels under way; vessels or seaplanes being towed; vessels being pushed ahead (Rule 5).

(a) A sailing vessel under way and any vessel or seaplane being towed shall carry the same lights as are prescribed in section 1062 of this title for a power-driven vessel or a seaplane under way, respectively, with the exception of the white lights prescribed therein, which they shall never carry. They shall also carry stern lights as prescribed in section 1070 of this title, provided that vessels towed, except the last vessel of a tow, may carry, in lieu of such stern light, a small white light as prescribed in section 1063(b) of this title.

(b) In addition to the lights prescribed in subsection (a) of this section, a sailing vessel may carry on the top of the foremast two lights in a vertical line one over the other, sufficiently separated so as to be clearly distinguished. The upper light shall be red and the lower light shall be green. Both lights shall be constructed and fixed as prescribed in section 1062(a)(i) of this title and shall be visible at a distance of at least 2 miles.

(c) A vessel being pushed ahead shall carry, at the forward end, on the starboard side a green light and on the port side a red light, which shall have the same characteristics as the lights prescribed in section 1062(a) (iv) and (v) of this title and shall be screened as provided in section 1062(a)(vi) of this title, provided that any number of vessels pushed ahead in a group shall be lighted as one vessel.

(d) Between sunrise and sunset a vessel being towed, if the length of the tow exceed 600 feet, shall carry where it can best be seen a black diamond shape at least 2 feet in diameter. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 198.)

§ 1066. Vessels in bad weather; other sufficient cause (Rule 6).

(a) When it is not possible on account of bad weather or other sufficient cause to fix the green and red sidelights, these lights shall be kept at hand lighted and ready for immediate use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side,

nor, if practicable, more than 22½ degrees (2 points) abaft the beam on their respective sides.

(b) To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the lights they respectively contain, and shall be provided with proper screens. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 199.)

§ 1067. Substitute lights for power-driven vessels, power-driven vessels towing or pushing other vessels, vessels under oars or sails, vessels being towed or pushed ahead, and rowing boats (Rule 7).

Power-driven vessels of less than 65 feet in length, vessels under oars or sails or less than 40 feet in length, and rowing boats, when under way shall not be required to carry the lights prescribed in sections 1062, 1063, and 1065 of this title, but if they do not carry them they shall be provided with the following lights—

(a) Power-driven vessels of less than 65 feet in length, except as provided in subsections (b) and (c) of this section, shall carry—

(i) In the forepart of the vessel, where it can best be seen, and at a height above the gunwale of not less than 9 feet, a white light constructed and fixed as prescribed in section 1062(a)(i) of this title and of such a character as to be visible at a distance of at least 3 miles.

(ii) Green and red sidelights constructed and fixed as prescribed in section 1062(a) (iv) and (v) of this title, and of such a character as to be visible at a distance of at least 1 mile, or a combined lantern showing a green light and a red light from right ahead to 22½ degrees (2 points) abaft the beam on their respective sides. Such lantern shall be carried not less than 3 feet below the white light.

(b) Power-driven vessels of less than 65 feet in length when towing or pushing another vessel shall carry—

(i) In addition to the sidelights or the combined lantern prescribed in subsection (a)(ii) of this section two white lights in a vertical line, one over the other not less than 4 feet apart. Each of these lights shall be of the same construction and character as the white light prescribed in subsection (a)(i) of this section and one of them shall be carried in the same position. In a vessel with a single mast such lights may be carried on the mast.

(ii) Either a stern light as prescribed in section 1070 of this title or in lieu of that light a small white light abaft the funnel or aftermast for the tow to steer by, but such light shall not be visible forward of the beam.

(c) Power-driven vessels of less than 40 feet in length may carry the white light at a less height than 9 feet above the gunwale but it shall be carried not less than 3 feet above the sidelights or the combined lantern prescribed in subsection (a)(ii) of this section.

(d) Vessels of less than 40 feet in length, under oars or sails, except as provided in subsection (f) of this section, shall, if they do not carry the sidelights, carry, where it can best be seen, a lantern showing a green light on one side and a red light on the other, of such a character as to be visible at a distance of at least 1 mile, and so fixed that the green light shall not be seen on the port side, nor the red light on the starboard side. Where it is not possible to fix this light, it shall be kept ready for immediate use and shall be exhibited in sufficient time to prevent collision and so that the green light shall not be seen on the port side nor the red light on the starboard side.

(e) The vessels referred to in this section when being towed shall carry the sidelights or the combined lantern prescribed in subsections (a) or (d) of this section, as appropriate, and a stern light as prescribed in section 1070 of this title, or, except the last vessel of the tow, a small white light as prescribed in subsection (b)(ii) of this section. When being pushed ahead they shall carry at the forward end the sidelights or combined lantern prescribed in subsections (a) or (d) of this section, as appropriate, provided that any number of vessels referred to in this section when pushed ahead in a group shall be lighted as one vessel under this section unless the overall length of the group exceeds 65 feet when the provisions of section 1065(c) of this title shall apply.

(f) Small rowing boats, whether under oars or sail, shall only be required to have ready at hand an electric torch or a lighted lantern, showing a white light, which shall be exhibited in sufficient time to prevent collision.

(g) The vessels and boats referred to in this section shall not be required to carry the lights or shapes prescribed in sections 1064(a) and 1071(e) of this title and the size of their day signals may be less than is prescribed in sections 1064(c) and 1071 (c) of this title. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 199.)

§ 1068. Pilot-vessels on and off duty (Rule 8).

(a) A power-driven pilot-vessel when engaged on pilotage duty and under way—

(i) Shall carry a white light at the masthead at a height of not less than 20 feet above the hull, visible all round the horizon at a distance of at least 3 miles and at a distance of 8 feet below it a red light similar in construction and character. If such a vessel is of less than 65 feet in length she may carry the white light at a height of not less than 9 feet above the gunwale and the red light at a distance of 4 feet below the white light.

(ii) Shall carry the sidelights or lanterns prescribed in section 1062(a) (iv) and (v) or section 1067 (a)(ii) or (d) of this title, as appropriate, and the stern light prescribed in section 1070 of this title.

(iii) Shall show one or more flare-up lights at intervals not exceeding 10 minutes. An intermittent white light visible all round the horizon may be used in lieu of flare-up lights.

(b) A sailing pilot-vessel when engaged on pilotage duty and under way—

(i) Shall carry a white light at the masthead visible all round the horizon at a distance of at least 3 miles.

(ii) Shall be provided with the sidelights or lan-

tern prescribed in sections 1065(a) or 1067(d) of this title, as appropriate, and shall, on the near approach of or to other vessels, have such lights ready for use, and shall show them at short intervals to indicate the direction in which she is heading, but the green light shall not be shown on the port side nor the red light on the starboard side. She shall also carry the stern light prescribed in section 1070 of this title.

(iii) Shall show one or more flare-up lights at intervals not exceeding ten minutes.

(c) A pilot-vessel when engaged on pilotage duty and not under way shall carry the lights and show the flares prescribed in subsections (a) (i) and (iii) or (b) (i) and (iii) of this section, as appropriate, and if at anchor shall also carry the anchor lights prescribed in section 1071 of this title.

(d) A pilot-vessel when not engaged on pilotage duty shall show the lights or shapes for a similar vessel of her length. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 200.)

§ 1069. Fishing vessels; trawling vessels; fishing vessels by day (Rule 9).

(a) Fishing vessels when not engaged in fishing shall show the lights or shapes for similar vessels of their length.

(b) Vessels engaged in fishing, when under way or at anchor, shall show only the lights and shapes prescribed in this section, which lights and shapes shall be visible at a distance of at least 2 miles.

(c) (i) Vessels when engaged in trawling, by which is meant the dragging of a dredge net or other apparatus through the water, shall carry two lights in a vertical line, one over the other, not less than 4 feet nor more than 12 feet apart. The upper of these lights shall be green and the lower light white and each shall be visible all round the horizon. The lower of these two lights shall be carried at a height above the sidelights not less than twice the distance between the two vertical lights.

(ii) Such vessels may in addition carry a white light similar in construction to the white light prescribed in section 1062(a) (i) of this title but such light shall be carried lower than and abaft the all-round green and white lights.

(d) Vessels when engaged in fishing, except vessels engaged in trawling, shall carry the lights prescribed in subsection (c) (i) of this section except that the upper of the two vertical lights shall be red. Such vessels if of less than 40 feet in length may carry the red light at a height of not less than 9 feet above the gunwale and the white light not less than 3 feet below the red light.

(e) Vessels referred to in subsections (c) and (d) of this section, when making way through the water, shall carry the sidelights or lanterns prescribed in section 1062(a) (iv) and (v) or section 1067 (a) (ii) or (d) of this title, as appropriate, and the stern light prescribed in section 1070 of this title. When not making way through the water they shall show neither the sidelights nor the stern light.

(f) Vessels referred to in subsection (d) of this section with outlying gear extending more than 500 feet horizontally into the seaway shall carry an additional all-round white light at a horizontal distance of not less than 6 feet nor more than 20 feet away from the vertical lights in the direction of the outlying gear. This additional white light shall be placed at a height not exceeding that of the white light prescribed in subsection (c) (i) of this section and not lower than the sidelights.

(g) In addition to the lights which they are required by this section to carry, vessels engaged in fishing may, if necessary in order to attract the attention of an approaching vessel, use a flare-up light, or may direct the beam of their searchlight in the direction of a danger threatening the approaching vessel, in such a way as not to embarrass other vessels. They may also use working lights but fisherman shall take into account that specially bright or insufficiently screened working lights may impair the visibility and distinctive character of the lights prescribed in this section.

(h) By day vessels when engaged in fishing shall indicate their occupation by displaying where it can best be seen a black shape consisting of two cones each not less than 2 feet in diameter with their points together one above the other. Such vessels if of less than 65 feet in length may substitute a basket for such black shape. If their outlying gear extends more than 500 feet horizontally into the seaway vessels engaged in fishing shall display in addition one black conical shape, point upwards, in the direction of the outlying gear.

NOTE.—Vessels fishing with trolling lines are not "engaged in fishing" as defined in section 1061(c) (xiv) of this title. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 201.)

§ 1070. Stern and tail lights (Rule 10).

(a) Except where otherwise provided in sections 1061 to 1094 of this title, a vessel when under way shall carry at her stern a white light, so constructed that it shall show an unbroken light over an arc of the horizon of 135 degrees (12 Points of the compass), so fixed as to show the light 67½ degrees (6 points) from right aft on each side of the vessel, and of such a character as to be visible at a distance of at least 2 miles.

(b) In a small vessel, if it is not possible on account of bad weather or other sufficient cause for this light to be fixed, an electric torch or a lighted lantern showing a white light shall be kept at hand ready for use and shall, on the approach of an overtaking vessel, be shown in sufficient time to prevent collision.

(c) A seaplane on the water when under way shall carry on her tail a white light, so constructed as to show an unbroken light over an arc of the horizon of 140 degrees of the compass, so fixed as to show the light 70 degrees from right aft on each side of the seaplane, and of such a character as to be visible at a distance of at least 2 miles. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 202.)

§ 1071. Vessels and seaplanes at anchor or aground (Rule 11).

(a) A vessel of less than 150 feet in length, when at anchor, shall carry in the forepart of the vessel, where it can best be seen, a white light visible all round the horizon at a distance of at least 2 miles.

Such a vessel may also carry a second white light in the position prescribed in subsection (b) of this section but shall not be required to do so. The second white light, if carried, shall be visible at a distance of at least 2 miles and so placed as to be as far as possible visible all round the horizon.

(b) A vessel of 150 feet or more in length, when at anchor, shall carry near the stem of the vessel, at a height of not less than 20 feet above the hull, one such light, and at or near the stern of the vessel and at such a height that it shall be not less than 15 feet lower than the forward light, another such light. Both these lights shall be visible at a distance of at least 3 miles and so placed as to be as far as possible visible all round the horizon.

(c) Between sunrise and sunset every vessel when at anchor shall carry in the forepart of the vessel, where it can best be seen, one black ball not less than 2 feet in diameter.

(d) A vessel engaged in laying or in picking up a submarine cable or navigation mark, or a vessel engaged in surveying or underwater operations, when at anchor, shall carry the lights or shapes prescribed in section 1064(c) of this title in addition to those prescribed in the appropriate preceding subsections of this section.

(e) A vessel aground shall carry the light or lights prescribed in subsections (a) or (b) of this section and the two red lights prescribed in section 1064(a) of this title. By day she shall carry, where they can best be seen, three black balls, each not less than 2 feet in diameter, placed in a vertical line one over the other, not less than 6 feet apart.

(f) A seaplane on the water under 150 feet in length, when at anchor, shall carry, where it can best be seen, a white light, visible all round the horizon at a distance of at least 2 miles.

(g) A seaplane on the water 150 feet or upwards in length, when at anchor, shall carry, where they can best be seen, a white light forward and a white light aft, both lights visible all round the horizon at a distance of at least 3 miles; and, in addition, if the seaplane is more than 150 feet in span, a white light on each side to indicate the maximum span, and visible, so far as practicable, all round the horizon at a distance of 1 mile.

(h) A seaplane aground shall carry on anchor light or lights as prescribed in subsections (f) and (g) of this section, and in addition may carry two red lights in a vertical line, at least 3 feet apart, so placed as to be visible all round the horizon. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 202.)

§ 1072. Additional lights and signals when necessary (Rule 12).

Every vessel or seaplane on the water may, if necessary in order to attract attention, in addition to the lights which she is by sections 1061 to 1094 of this title required to carry, show a flare-up light or use a detonating or other efficient sound signal that cannot be mistaken for any signal authorised elsewhere under such sections. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 203.)

§ 1073. Ships of war, convoy vessels, fishing vessels, and seaplanes on water; naval and military vessels and seaplanes of special construction (Rule 13).

(a) Nothing in sections 1061 to 1094 of this title shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for ships of war, for vessels sailing under convoy, for fishing vessels engaged in fishing as a fleet or for seaplanes on the water.

(b) Whenever the Government concerned shall have determined that a naval or other military vessel or waterborne seaplane of special construction or purpose cannot comply fully with the provisions of any of sections 1061 to 1094 of this title with respect to the number, position, range or arc of visibility of lights or shapes, without interfering with the military function of the vessel or seaplane, such vessel or seaplane shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes as her Government shall have determined to be the closest possible compliance with such sections in respect of that vessel or seaplane. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 203.)

§ 1074. Vessels proceeding under sail, when also propelled by machinery (Rule 14).

A vessel proceeding under sail, when also being propelled by machinery, shall carry in the daytime forward, where it can best be seen, one black conical shape, point downwards, not less than 2 feet in diameter at its base. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 203.)

SOUND SIGNALS AND CONDUCT IN RESTRICTED VISIBILITY

§ 1075. General considerations of radar.

1. The possession of information obtained from radar does not relieve any vessel of the obligation of conforming strictly with sections 1061 to 1094 of this title and, in particular, the obligations contained in sections 1076 and 1077 of this title.

2. The Annex to the Rules contains recommendations intended to assist in the use of radar as an aid to avoiding collision in restricted visibility. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 203.)

§ 1076. Sound signals (Rule 15).

(a) Power-driven, and sailing vessels.

A power-driven vessel of 40 feet or more in length shall be provided with an efficient whistle, sounded by steam or by some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog horn to be sounded by mechanical means, and also with an efficient bell. A sailing vessel of 40 feet or more in length shall be provided with a similar fog horn and bell.

(b) Methods of sending.

All signals prescribed in this section for vessels under way shall be given—

(i) by power-driven vessels on the whistle;

(ii) by sailing vessels on the fog horn;

(iii) by vessels towed on the whistle or fog horn.

(c) Number and length of blasts and rings.

In fog, mist, falling snow, heavy rainstorms, or any other condition similarly restricting visibility, whether by day or night, the signals prescribed in this section shall be used as follows—

(i) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes a prolonged blast.

(ii) A power-driven vessel under way, but stopped and making no way through the water, shall sound at intervals of not more than 2 minutes two prolonged blasts, with an interval of about 1 second between them.

(iii) A sailing vessel under way shall sound, at intervals of not more than 1 minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(iv) A vessel when at anchor shall at intervals of not more than 1 minute ring the bell rapidly for about 5 seconds. In vessels of more than 350 feet in length the bell shall be sounded in the forepart of the vessel, and in addition there shall be sounded in the after part of the vessel, at intervals of not more than 1 minute for about 5 seconds, a going or other instrument, the tone and sounding of which cannot be confused with that of the bell. Every vessel at anchor may in addition, in accordance with section 1072 of this title, sound three blasts in succession, namely, one short, one prolonged, and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.

(v) A vessel when towing, a vessel engaged in laying or in picking up a submarine cable or navigation mark, and a vessel under way which is unable to get out of the way of an approaching vessel through being not under command or unable to manoeuvre as required by sections 1061 to 1094 of this title shall, instead of the signals prescribed in clauses (i), (ii), and (iii) of this subsection sound, at intervals of not more than 1 minute, three blasts in succession, namely, one prolonged blast followed by two short blasts.

(vi) A vessel towed, or, if more than one vessel is towed, only the last vessel of the tow, if manned, shall, at intervals of not more than 1 minute, sound four blasts in succession, namely, one prolonged blast followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.

(vii) A vessel aground shall give the bell signal and, if required, the gong signal, prescribed in clause (iv) of this subsection and shall, in addition, give 3 separate and distinct strokes on the bell immediately before and after such rapid ringing of the bell.

(viii) A vessel engaged in fishing when under way or at anchor shall at intervals of not more than 1 minute sound the signal prescribed in clause (v) of this subsection. A vessel when fishing with trolling lines and under way shall sound the signals prescribed in clauses (i), (ii), or (iii) of this subsection as may be appropriate.

(ix) A vessel of less than 40 feet in length, a rowing boat, or a seaplane on the water, shall not be obliged to give the above-mentioned signals but if she does not, she shall make some other efficient sound signal at intervals of not more than 1 minute.

(x) A power-driven pilot-vessel when engaged on pilotage duty may, in addition to the signals prescribed in clauses (i), (ii) and (iv) of this subsection, sound an identity signal consisting of 4 short blasts.

(Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 203.)

§ 1077. Speed in weather restricting visibility (Rule 16).

(a) Every vessel, or seaplane when taxi-ing on the water, shall, in fog, mist, falling snow, heavy rainstorms or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions.

(b) A power-driven vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, go far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

(c) A power-driven vessel which detects the presence of another vessel forward of her beam before hearing her fog signal or sighting her visually may take early and substantial action to avoid a close quarters situation but, if this cannot be avoided, she shall, so far as the circumstances of the case admit, stop her engines in proper time to avoid collision and then navigate with caution until danger of collision is over. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 205.)

STEERING AND SAILING RULES

§ 1078. General considerations.

1. In obeying and construing sections 1061 to 1094 of this title, any action taken should be positive, in ample time, and with due regard to the observance of good seamanship.

2. Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

3. Mariners should bear in mind that seaplanes in the act of landing or taking off, or operating under adverse weather conditions, may be unable to change their intended action at the last moment.

4. Sections 1079 to 1086 of this title apply only to vessels in sight of one another. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 205.)

§ 1079. Sailing vessels approaching one another; windward side (Rule 17).

(a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of

them shall keep out of the way of the other as follows—

(i) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other.

(ii) When both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

(b) For the purposes of this section the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 205.)

§ 1080. Power-driven vessels meeting end on; definition (Rule 18).

(a) When two power-driven vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other. This section only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective course, pass clear of each other. The only cases to which it does apply are when each of two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the sidelights of the other. It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or, by night, to cases where the red light of one vessel is opposed to the red light of the other or where the green light of one vessel is opposed to the green light of the other or where a red light without a green light or a green light without a red light is seen ahead, or where both green and red lights are seen anywhere but ahead.

(b) For the purposes of this section and sections 1081 to 1091 of this title inclusive, except section 1082(c) and section 1090 of this title, a seaplane on the water shall be deemed to be a vessel, and the expression "power-driven vessel" shall be construed accordingly. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 205.)

§ 1081. Power-driven vessels crossing (Rule 19).

When two power-driven vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 206.)

§ 1082. Vessels or seaplanes meeting (Rule 20).

(a) When a power-driven vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, except as provided for in sections 1086 and 1088 of this title, the power-driven vessel shall keep out of the way of the sailing vessel.

(b) This section shall not give to a sailing vessel the right to hamper, in a narrow channel, the safe passage of a power-driven vessel which can navigate only inside such channel.

(c) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with sections 1061 to 1094 of this title. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 206.)

§ 1083. Vessels having right of way; duty in aiding to avert collision (Rule 21).

Where by any of sections 1061 to 1094 of this title one of two vessels is to keep out of the way, the other shall keep her course and speed. When, from any cause, the latter vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision (see sections 1089 and 1091 of this title). (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 206.)

§ 1084. Positive action to keep out of way; crossing ahead of vessel having right of way (Rule 22).

Every vessel which is directed by sections 1061 to 1094 of this title to keep out of the way of another vessel shall, so far as possible, take positive early action to comply with this obligation, and shall, if the circumstances of the case admit, avoid crossing ahead of the other. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 206.)

§ 1085. Duty to slacken speed, stop or reverse (Rule 23).

Every power-driven vessel which is directed by sections 1061 to 1094 of this title to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 206.)

§ 1086. Overtaking vessel to keep out of way (Rule 24).

(a) Notwithstanding anything contained in sections 1061 to 1094 of this title, every vessel overtaking any other shall keep out of the way of the overtaken vessel.

(b) Every vessel coming up with another vessel from any direction more than 22½ degrees (2 points) abaft her beam, i.e., in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's sidelights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of sections 1061 to 1094 of this title, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

(c) If the overtaking vessel cannot determine with certainty whether she is forward of or abaft this direction from the other vessel, she shall assume that she is an overtaking vessel and keep out of the way. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 206.)

§ 1087. Power-driven vessels in narrow channels; nearing bends therein (Rule 25).

(a) In a narrow channel every power-driven vessel when proceeding along the course of the chan-

nel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

(b) Whenever a power-driven vessel is nearing a bend in a channel where a vessel approaching from the other direction cannot be seen, such power-driven vessel, when she shall have arrived within one-half (½) mile of the bend, shall give a signal by one prolonged blast on her whistle which signal shall be answered by a similar blast given by any approaching power-driven vessel that may be within hearing around the bend. Regardless of whether an approaching vessel on the farther side of the bend is heard, such bend shall be rounded with alertness and caution.

(c) In a narrow channel a power-driven vessel of less than 65 feet in length shall not hamper the safe passage of a vessel which can navigate only inside such channel. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 207.)

§ 1088. Right of way of fishing vessels; obstruction of fairways (Rule 26).

All vessels not engaged in fishing, except vessels to which the provisions of section 1064 of this title apply, shall, when under way, keep out of the way of vessels engaged in fishing. This section shall not give to any vessel engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 207.)

§ 1089. Special circumstances requiring departure from rules to avoid immediate danger (Rule 27).

In obeying and construing sections 1061 to 1094 of this title due regard shall be had to all dangers of navigation and collision, and to any special circumstances, including the limitations of the craft involved, which may render a departure from such sections necessary in order to avoid immediate danger. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 207.)

SOUND SIGNALS FOR VESSELS IN SIGHT OF ONE ANOTHER

§ 1090. Sound signals indicating course (Rule 28).

(a) Meaning of blasts.

When vessels are in sight of one another, a power-driven vessel under way, in taking any course authorised or required by sections 1061 to 1094 of this title, shall indicate that course by the following signals on her whistle, namely—

One short blast to mean "I am altering my course to starboard".

Two short blasts to mean "I am altering my course to port".

Three short blasts to mean "My engines are going astern".

(b) Doubt as to action of other vessel.

Whenever a power-driven vessel which, under sections 1061 to 1094 of this title, is to keep her course and speed, is in sight of another vessel and is in doubt whether sufficient action is being taken by the other vessel to avert collision, she may indicate such doubt by giving at least five short and rapid blasts on the whistle. The giving of such a signal shall not relieve a vessel of her obligations under sections 1089 and 1091 of this title or any other provision of sections 1061 to 1094 of this title, or of her duty to indicate any action taken under sections 1061 to 1094 of this title by giving the appropriate sound signals laid down in this section.

(c) Simultaneous operation of whistle and visual signals.

Any whistle signal mentioned in this section may be further indicated by a visual signal consisting of a white light visible all round the horizon at a distance of at least 5 miles, and so devised that it will operate simultaneously and in conjunction with the whistle-sounding mechanism and remain lighted and visible during the same period as the sound signal.

(d) Additional signals between ships of war or vessels sailing under convoy.

Nothing in sections 1061 to 1094 of this title shall interfere with the operation of any special rules made by the Government of any nation with respect to the use of additional whistle signals between ships of war or vessels sailing under convoy. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 207.)

MISCELLANEOUS RULES

§ 1091. Usual additional precautions required generally (Rule 29).

Nothing in sections 1061 to 1094 of this title shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 208.)

§ 1092. Reservation of rules for harbours and inland navigation (Rule 30).

Nothing in sections 1061 to 1094 of this title shall interfere with the operation of a special rule duly made by local authority relative to the navigation of any harbour, river, lake, or inland water, including a reserved seaplane area. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 208.)

§ 1093. Distress signals (Rule 31).

(a) When a vessel or seaplane on the water is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, namely—

(i) A gun or other explosive signal fired at intervals of about a minute.

(ii) A continuous sounding with any fog-signalling apparatus.

(iii) Rockets or shells, throwing red stars fired one at a time at short intervals.

(iv) A signal made by radiotelegraphy or by any other signalling method consisting of the group . . . — — — . . . in the Morse Code.

(v) A signal sent by radiotelephony consisting of the spoken word "Mayday".

(vi) The International Code Signal of distress indicated by N.C.

(vii) A signal consisting of a square flag having above or below it a ball or anything resembling a ball.

(viii) Flames on the vessel (as from a burning tar barrel, oil barrel, &c.).

(ix) A rocket parachute flare or a hand flare showing a red light.

(x) A smoke signal giving off a volume of orange-coloured smoke.

(xi) Slowly and repeatedly raising and lowering arms outstretched to each side.

NOTE.—Vessels in distress may use the radiotelegraph alarm signal or the radiotelephone alarm signal to secure attention to distress calls and messages. The radiotelegraph alarm signal, which is designed to actuate the radiotelegraph auto alarms of vessels so fitted, consists of a series of twelve dashes, sent in 1 minute, the duration of each dash being 4 seconds, and the duration of the interval between 2 consecutive dashes being 1 second. The radiotelephone alarm signal consists of 2 tones transmitted alternately over periods of from 30 seconds to 1 minute.

(b) The use of any of the foregoing signals, except for the purpose of indicating that a vessel or seaplane is in distress, and the use of any signals which may be confused with any of the above signals, is prohibited. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 208.)

CODIFICATION

See Historical Note under section 1053 of this title.

EFFECTIVE DATE

Section effective Sept. 1, 1965, see Proc. No. 3632, Dec. 29, 1964, 29 F.R. 19167, set out as a note under section 1051 of this title.

ANNEX TO RULES

§ 1094. Other general considerations.

Assumptions to be avoided.

(1) Assumptions made on scanty information may be dangerous and should be avoided.

Radar navigation; moderate speed; limitations of radar.

(2) A vessel navigating with the aid of radar in restricted visibility must, in compliance with section 1077(a) of this title, go at a moderate speed. Information obtained from the use of radar is one of the circumstances to be taken into account when determining moderate speed. In this regard it must be recognised that small vessels, small icebergs and similar floating objects may not be detected by radar. Radar indications of one or more vessels in the vicinity may mean that "moderate speed" should be slower than a mariner without radar might consider moderate in the circumstances.

Same; duty to stop.

(3) When navigating in restricted visibility the radar range and bearing alone do not constitute ascertainment of the position of the other vessel under section 1077(b) of this title sufficiently to relieve a vessel of the duty to stop her engines and navigate with caution when a fog signal is heard forward of the beam.

Close quarters; circumstances to guide alteration of course or speed.

(4) When action has been taken under section 1077(c) of this title to avoid a close quarters situation, it is essential to make sure that such action is having the desired effect. Alterations of course or speed or both are matters as to which the mariner must be guided by the circumstances of the case.

Close quarters; alteration of course to avoid.

(5) Alteration of course alone may be the most effective action to avoid close quarters provided that—

(a) There is sufficient sea room.

(b) It is made in good time.

(c) It is substantial. A succession of small alterations of course should be avoided.

(d) It does not result in a close quarters situation with other vessels.

Alteration of course; circumstances to guide direction; general preference for alteration to starboard.

(6) The direction of an alteration of course is a matter in which the mariner must be guided by the circumstances of the case. An alteration to starboard, particularly when vessels are approaching apparently on opposite or nearly opposite courses, is generally preferable to an alteration to port.

Substantial alteration of speed.

(7) An alteration of speed, either alone or in conjunction with an alteration of course, should be substantial. A number of small alterations of speed should be avoided.

Close quarters; action to take all way off vessel.

(8) If a close quarters situation is imminent, the most prudent action may be to take all way off the vessel. (Pub. L. 88–131, § 4, Sept. 24, 1963, 77 Stat. 209.)

CODIFICATION

See Historical Note under section 1053 of this title.

EFFECTIVE DATE

Section effective Sept. 1, 1965, see Proc. No. 3632, Dec. 29, 1964, 29 F.R. 19167, set out as a note under section 1051 of this title.

19. Intervention on the High Seas

Public Law 93–248 (88 Stat. 8)

(See Intervention on High Seas under title VIII *Oceanography*)

20. Licensing of Fishing Vessels

46 U.S.C. 262, 263, 319, 323–325

§ 262. License; oath not to defraud revenue; oath as to citizenship.

No licensed vessel shall be employed in any trade whereby the revenue laws of the United States shall be defrauded. The master of every such vessel shall swear that he is a citizen of the United States, and that such license shall not be used for any other vessel or any other employment than that for which it was specially granted, or in any trade or business whereby the revenue of the United States may be defrauded; and if such vessel be less than twenty tons burden, the husband or managing owner shall swear that she is wholly the property of citizens of the United States; whereupon it shall be the duty of the collector of the district comprehending the port whereto such vessel may belong to grant a license. (R. S. § 4320; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 251; Jan. 16, 1895, ch. 24, § 3, 28 Stat. 625.)

§ 263. Form of license; coastal vessels of five tons or more; vessels operating on Great Lakes.

The form of a license for carrying on the coasting trade or fisheries shall be as follows:

"License for carrying on the (here insert 'coasting trade', 'whale fishery', 'mackerel fishery', or 'cod fishery', as the case may be).

"In pursuance of Title L, 'Regulation of Vessels in Domestic Commerce', of the Revised Statutes of the United States, (inserting here the name of the husband or managing owner, with his occupation and place of abode, and the name of the master, with the place of his abode), having sworn that the (insert here the description of the vessel, whether ship, brigantine, scow, schooner, sloop, or whatever else she may be), called the (insert here the vessel's name), whereof the said (naming the master) is master, burden (insert here the number of tons, in words) tons, as appears by her enrollment, dated at (naming the district, day, month, and year, in words at length, but if she be less than twenty tons, insert, instead thereof, 'proof being had of her admeasurement'), shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded, and having also sworn (or affirmed) that this license shall not be used for any other vessel, or for any other employment, than is herein specified, license is hereby granted for the said (inserting here the description of the vessel) called the (inserting here the vessel's name), to be employed in carrying on the (inserting here 'coasting trade', 'whale fishery', 'mackerel fishery', or 'cod fishery', as the case may be), for one year from the date hereof, and no longer. Given under my hand and seal, at (naming the said district), this (inserting the particular day) day of (naming the month), in the year (specifying the number of the year in words at length);": *Provided*, That vessels of five net tons and over entitled under the laws of the United States to be enrolled and licensed or licensed for the coasting trade may be licensed for the "coasting trade and mackerel fishery", and shall be deemed to have sufficient license for engaging in the coasting trade and the taking of fish of every description, including shellfish: *Provided further*, That the provisions of sections 310 and 311 of this title shall be, and are hereby, made applicable to vessels so licensed: *And provided further*, That vessels operating on the Great Lakes and their connecting and tributary waters under enrollment and license issued in conformity with the provisions of section 258 of this title, shall be deemed to have sufficient license for engaging in the taking of fish of every description within such waters without change in the form of enrollment and license prescribed under the authority of that section. (R. S. § 4321; May 20, 1936, ch. 434, 49 Stat. 1367.)

AMENDMENTS

1936—Act May 20, 1936, substituted the words "having sworn" for "having given bond" and added the three proviso clauses.

§ 319. Fine for trading without license.

Every vessel of twenty tons or upwards, entitled to be documented as a vessel of the United States, other than registered vessels found trading between district and district, or between different places in the same district, or carrying on the fishery, without being enrolled and licensed, and every vessel of less than twenty tons and not less than five tons burden found trading or carrying on the fishery as aforesaid without a license obtained as provided by this chapter, shall be liable to a fine of $30 at every port of arrival without such enrollment or license, and if she have on board any merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, she shall, together with her tackle, apparel and furniture, and the lading found on board, be forfeited. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found on board such vessel, shall be prima facie evidence of the foreign origin of such merchandise. But if the license shall have expired while the vessel was at sea, and there shall have been no opportunity to renew such license, then said fine or forfeiture shall not be incurred. (June 19, 1886, ch. 421, § 7, 24 Stat. 81; Aug. 5, 1935, ch. 438, title III, § 314, 49 Stat. 529.)

§ 323. Penalty for forgery and alteration.

Every person who forges, counterfeits, erases, alters, or falsifies any enrollment, license, certificate, permit, or other document, mentioned or required in sections 251 to 255, 258, 259, 262 to 280, 293, 306 to 316, 318, 321 to 330, and 333 to 335 of this title, to be granted by any officer of the revenue, such person, so offending, shall be liable to a penalty of $500. (R. S. § 4375.)

§ 324. Penalty for obstructing officers.

Every person who assaults, resists, obstructs, or hinders any officer in the execution of any Act or law relating to the enrollment, registry, or licensing

of vessels, or of sections 251 to 255, 258, 259, 262 to 280, 293, 306 to 316, 318, 321 to 330, and 333 to 335 of this title, or of any of the powers or authorities vested in him by any such Act or law, shall, for every such offense, for which no other penalty is particularly provided, be liable to a penalty of $500. (R. S. § 4376.)

§ 325. Penalty for violation of license.

Whenever any licensed vessel is transferred, in whole or in part, to any person who is not at the time of such transfer a citizen of and resident within the United States, or is employed in any other trade than that for which she is licensed, or is employed in any trade whereby the revenue of the United States is defrauded, or is found with a forged or altered license, or one granted for any other vessel, or with merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, such vessel with her tackle, apparel and furniture, and the cargo, found on board her, shall be forfeited. But vessels which may be licensed for the mackerel fishery shall not incur such forfeiture by engaging in catching cod or fish of any other description whatever. For the purposes of this section, marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any vessel, shall be prima facie evidence of the foreign origin of such merchandise. (R. S. § 4377; Aug. 5, 1935, ch. 438, title III, § 313, 49 Stat. 528.)

AMENDMENTS

1935—Act Aug. 5, 1935, subjected to forfeiture any vessel employed in any trade whereby revenue of the United States is defrauded or which is found with merchandise of foreign growth or manufacture or any domestic alcoholic liquors on which duties or taxes have not been paid and added the sentence making marks, etc., prima facie evidence of foreign origin of merchandise.

21. Load Lines for American Vessels

46 U.S.C. 86–86i

SUBCHAPTER I.—LOADLINES FOR VESSELS MAKING FOREIGN SEA VOYAGES

§ 86. Enforcement; regulations; personnel.

The Secretary of the department in which the Coast Guard is operating (hereinafter referred to as "Secretary") shall enforce the provisions of this subchapter and prescribe regulations to carry out its provisions. With the consent of the Secretary of the Treasury, the Secretary may utilize officers of the Bureau of Customs to enforce this subchapter and the regulations established hereunder. (Pub. L. 93–115, § 2, Oct. 1, 1973, 87 Stat. 418.)

SHORT TITLE

Section 1 of Pub. L. 93–115 provided: "That this act [which enacted this subchapter and repealed sections 85 to 85g of this title] may be cited as the 'International Voyage Load Line Act of 1973'."

§ 86a. Definitions.

As used in this subchapter—

(1) "new ship" means a vessel the keel of which is laid (or which is at a similar stage of construction) on or after July 21, 1968; and

(2) "existing ship" means a vessel which is not a "new ship".

(Pub. L. 93–115, § 3, Oct. 1, 1973, 87 Stat. 418.)

§ 86b. Vessels subject to subchapter.

(a) Federal jurisdiction.

This subchapter applies to vessels which—

(1) arrive at any port or place within the juris-

diction of the United States from foreign ports;

(2) make voyages between foreign ports (except foreign vessels engaged in such voyages); or

(3) depart from any port or place within the jurisdiction of the United States for a foreign port.

(b) Excepted vessels.

This subchapter does not apply to—

(1) ships of war;

(2) pleasure craft not used in trade or commerce.

(3) fishing vessels;

(4) existing ships of less than one hundred and fifty gross tons;

(5) new ships of less than seventy-nine feet in length;

(6) vessels which navigate exclusively on the Great Lakes; or

(7) vessels operating on shelter waters between ports of the United States and neighboring countries as provided in any treaty of the United States.

(c) Loadline vessels; surrender of loadline certificate; removal of loadline marks.

A vessel which voluntarily obtains loadlines shall be treated as a vessel subject to this subchapter until its loadline certificate is surrendered and its loadline marks removed.

(d) Treaties or conventions unaffected.

This subchapter does not abrogate any provisions of treaties or conventions in effect, which are not in conflict with the International Convention on Loadlines, 1966, and to which the United States has acceded. (Pub. L. 93–115, § 4, Oct. 1, 1973, 87 Stat. 418.)

§ 86c. Determination of loadlines.

(a) Minimum freeboard; criteria.

The Secretary shall prescribe loadlines, the marking thereof, and associated condition surveys for vessels subject to this subchapter to indicate the minimum freeboard to which each may be safely loaded, giving due consideration to, and making differentials for the service, type, and character of each vessel, and in conformance with applicable international treaties or conventions to which the United States has acceded.

(b) Marking and maintaining loadlines; issuance of loadline certificate.

Loadlines shall be permanently and conspicuously marked and maintained in the manner prescribed by the Secretary. Upon completion of survey requirements and a finding that the loadline is positioned and marked in the manner prescribed, the Secretary shall issue a loadline certificate, to the master or owner of the vessel, which shall be carried on board the vessel.

(c) Prescribed loadlines; minimum safe freeboard; greater freeboard than minimum safe freeboard.

A loadline shall not be established or marked which, in the judgment of the Secretary, authorizes less than the minimum safe freeboard. At the request of the owner a loadline may be established or marked to indicate a greater freeboard than that which the Secretary determines is the minimum safe freeboard; any such loadline shall be the prescribed loadline for purposes of section 86g of this title. (Pub. L. 93–115, § 5, Oct. 1, 1973, 87 Stat. 418.)

§ 86d. Survey or registry of shipping.

(a) Appointments for determination of condition of vessels and positioning and marking of loadlines; issuance of loadline certificate.

The Secretary shall appoint the American Bureau of Shipping, or such other United States nonprofit corporations or associations for the survey or registry of shipping which he approves, to determine that a vessel's condition is satisfactory and whether its loadline is positioned and marked in the manner prescribed by the Secretary and thereupon to issue a loadline certificate.

(b) Appointees.

The Secretary may appoint for the purpose of this section:

(1) any officer of the United States, or

(2) at the request of the shipowner, any other corporation or association for the survey or registry of shipping which he approves.

(c) Revocation of appointments.

The Secretary may revoke an appointment under this section at any time. (Pub. L. 93–115, § 6, Oct. 1, 1973, 87 Stat. 419.)

§ 86e. Exemptions; certificate of exemption.

When a vessel subject to this subchapter is shown to be entitled to an exemption from the provisions of this subchapter by an international agreement to which the United States has acceded, a certificate of exemption shall be issued to the vessel, and carried in lieu of the certificate required by section 86c of this title. (Pub. L. 93–115, § 7, Oct. 1, 1973, 87 Stat. 419.)

§ 86f. Foreign vessels.

(a) Compliance with subchapter by compliance with loadlines and markings of foreign country and issuance of foreign certificate; international agreement for control of foreign vessels.

When it is found that the law and regulations in force in a foreign country relating to loadlines are equally effective as this subchapter and the regulations hereunder, or when a foreign country has acceded to an international loadline agreement to which the United States has acceded, the markings and certificate thereof of a vessel of the country shall be accepted as complying with the provisions of this subchapter and regulations hereunder. The control of such vessels shall be as provided in the applicable international agreement.

(b) Reciprocal loadline recognition.

Subsection (a) of this section does not apply to vessels of foreign nations which do not similarly recognize the loadlines prescribed under this subchapter. (Pub. L. 93–115, § 8, Oct. 1, 1973, 87 Stat. 419.)

§ 86g. Loading restrictions. submerging loadlines or loadline marks; recordation by masters of position of loadline marks and actual drafts.

(a) No vessel subject to this subchapter may be

so loaded as to submerge the prescribed loadline, or to submerge the point where an appropriate loadline under the subchapter and the prescribed regulations should be marked.

(b) The master of a vessel subject to this subchapter shall, after loading but before departing for a voyage by sea from any port or place in which this subchapter applies, record in the official logbook or other permanent record of the vessel a statement of the relative position of the prescribed loadline mark applicable at the time in question with respect to the water surface, and, of the actual draft of the vessel, forward and aft, at the time, as nearly as they may be ascertained. (Pub. L. 93–115, § 9, Oct. 1, 1973, 87 Stat. 419.)

§ 86h. Detention of vessels.

(a) Reasonable belief; notice to master or officer in charge of vessel; detention order.

When the Secretary has reason to believe that a vessel is about to leave a port in the United States, or its possessions in violation of this subchapter or the regulations hereunder, the Secretary may, upon notifying the master or officer in charge of the vessel, order the vessel detained.

(b) Clearance; refusal or withdrawal.

Clearance required by section 91 of this title shall be refused or withdrawn from any vessel so detained until correction of deficiencies.

(c) Petition for review; regulations.

The master or officer in charge of a vessel may petition the Secretary, in a manner prescribed by regulation, to review the detention order.

(d) Administrative determination.

Upon receipt of a petition, the Secretary may withdraw the detention order, modify it, or require independent surveys as may be necessary to determine the extent of deficiencies. Upon completion of his review, including results of any required independent surveys he shall affirm, set aside, or modify the detention order.

(e) Liability of owner for costs.

The owner of a vessel is liable for any costs incident to a petition for review and any independent surveys if the vessel is found to be in violation of this subchapter or the regulations hereunder. (Pub. L. 93–115, § 10, Oct. 1, 1973, 87 Stat. 420.)

§ 86i. Penalties for violations.

(a) Civil liability for violations of subchapter; separate violations.

Except as otherwise provided in this section, the owner and the master of a vessel found in violation of this subchapter or the regulations thereunder, are each liable to a civil penalty of not more than $1,000 for each day the vessel is in violation.

(b) Civil liability for section 86g(a) violations.

Each person, if the owner, manager, agent, or master of a vessel who knowingly allows, causes, attempts to cause, or fails to take reasonable care to prevent the violation of section 86g(a) of this title or the regulations thereunder, is liable to a civil penalty of not more than $1,000 plus an additional amount of not more than $500 per inch of unlawful submergence.

(c) Civil liability for section 86g(b) violations.

For any violation of subsection (b) of section 86g of this title or the regulations thereunder, the master of the vessel is liable to a civil penalty of not more than $500.

(d) Criminal liability for departures in violation of detention orders.

Any person who knowingly causes or permits the departure of a vessel from any port or place within the jurisdiction of the United States or its possessions in violation of a detention order pursuant to section 86h of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(e) Criminal liability for concealment, removal, alteration, defacement, or obliteration of vessel marks, lawful changes; wartime escape from enemy capture.

Any person who causes or allows the concealment, removal, alteration, defacement, or obliteration of any mark placed on a vessel pursuant to section 86c of this title and the regulations thereunder, except in the event of a lawful change or to escape enemy capture in time of war, shall be fined not more than $2,000 or imprisoned not more than two years or both.

(f) Liability of vessel.

For any penalty under this section the vessel is also liable.

(g) Administrative assessment, collection, remission, mitigation, or compromise.

The Secretary may assess and collect any civil penalty incurred under this subchapter and, in his discretion, remit, mitigate, or comprise any penalty prior to referral to the Attorney General. (Pub. L. 93–115, § 11, Oct. 1, 1973, 87 Stat. 420.)

22. Load Lines for Vessels Engaged in Coastwide Trade

46 U.S.C. 88

§ 88. Establishment; vessels affected; exemptions.

(a) Load lines are established for merchant vessels of one hundred and fifty gross tons or over, loading at or proceeding to sea from any port or place within the United States or its possessions for a coastwise voyage by sea. By "coastwise voyage by sea" is meant a voyage on which a vessel in the usual course of her employment preceeds from one port or place in the United States or her possessions to another port or place in the United States or her possessions and passes outside the line dividing inland waters from the high seas, as defined in section 151

of Title 33.

(b) All cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska except those constructed after July 11, 1968 or those converted to either of such services after five years from July 11, 1968, and all vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, except those constructed after August 15, 1974, or those converted to any of such services after July 11, 1978, are exempt from the requirements of sections 88 to 881 of this title. (As amended Oct. 1, 1974, Pub. L. 93–430, § 6(1), 88 Stat. 1182.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–430 added vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, except those constructed after Aug. 15, 1974, or those converted to any of such services after July 11, 1978, to the exception clause.

23. Ports and Waterways Safety Act of 1972

33 U.S.C. 1221–1227

Sec.

§ 1221. Prevention of damage to vessels, bridges, and other structures; protection of navigable waters from environmental harm; authority of Secretary.

In order to prevent damage to, or the destruction or loss of any vessel, bridge, or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters; and to protect the navigable waters and the resources therein from environmental harm resulting from vessel or structure damage, destruction, or loss, the Secretary of the department in which the Coast Guard is operating may—

(1) establish, operate, and maintain vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic;

(2) require vessels which operate in an area of a vessel traffic service or system to utilize or comply with that service or system, including the carrying or installation of electronic or other devices necessary for the use of the service or system;

(3) control vessel traffic in areas which he determines to be especially hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

(i) specifying times of entry, movement, or departure to, from, within, or through ports, harbors, or other waters;

(ii) establishing vessel traffic routing schemes;

(iii) establishing vessel size and speed limitations and vessel operating conditions; and

(iv) restricting vessel operation, in a hazardous area or under hazardous conditions, to vessels which have particular operating characteristics and capabilities which he considers necessary for safe operation under the circumstances;

(4) direct the anchoring, mooring, or movement of a vessel when necessary to prevent damage to or by that vessel or her cargo, stores, supplies, or fuel;

(5) require pilots on self-propelled vessels engaged in the foreign trades in areas and under circumstances where a pilot is not otherwise required by State law to be on board until the State having jurisdiction of an area involved establishes a requirement for a pilot in that area or under the circumstances involved;

(6) establish procedures, measures, and standards for the handling, loading, discharge, storage, stowage, and movement, including the emergency removal, control and disposition, of explosives or other dangerous articles or substances (including the substances described in section 391a(2)(A), (B), and (C) of Title 46 on structures subject to this chapter;

(7) prescribe minimum safety equipment requirements for structures subject to this chapter to assure adequate protection from fire, explosion, natural disasters, and other serious accidents or casualties;

(8) establish water or waterfront safety zones or other measures for limited, controlled, or con-

ditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and

(9) establish procedures for examination to assure compliance with the minimum safety equipment requirements for structures.

(Pub. L. 92–340, title I, § 101, July 10, 1972, 86 Stat. 424.)

SHORT TITLE

Section 1 of Pub. L. 92–340 provided that: "This Act [enacting this chapter and amending section 391a of Title 46 and enacting provisions set out as notes under section 391a of Title 46] may be cited as the 'Ports and Waterways Safety Act of 1972'."

ESTABLISHMENT OF VESSEL TRAFFIC CONTROL SYSTEM FOR PRINCE WILLIAM SOUND AND VALDEZ, ALASKA

Pub. L. 93–153, title IV, § 402, Nov. 16, 1973, 87 Stat. 589, provided that: "The Secretary of the Department in which the Coast Guard is operating is hereby directed to establish a vessel traffic control system for Prince William Sound and Valdez, Alaska, pursuant to authority contained in title I of the Ports and Waterways Safety Act of 1972 (86 Stat. 424, Public Law 92–340) [this chapter]."

§ 1222. General provisions.

(a) Definition.

For the purpose of this Act, the term "United States" includes the fifty States, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Authority under other provisions and better safety requirements prescribed by other agencies unaffected.

Nothing contained in this chapter supplants or modifies any treaty or Federal statute or authority granted thereunder, nor does it prevent a State or political subdivision thereof from prescribing for structures only higher safety equipment requirements or safety standards than those which may be prescribed pursuant to this chapter.

(c) Consultation with appropriate agencies.

In the exercise of his authority under this chapter, the Secretary shall consult with other Federal agencies, as appropriate, in order to give due consideration to their statutory and other responsibilities, and to assure consistency of regulations applicable to vessels, structures, and areas covered by this chapter. The Secretary may also consider, utilize, and incorporate regulations or similar directory materials issued by port or other State and local authorities.

(d) Provisions of chapter inapplicable to Panama Canal; delegation of powers with respect to Saint Lawrence Seaway.

This chapter shall not be applicable to the Panama Canal. The authority granted to the Secretary under section 1221 of this title shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this chapter shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent that the Secretary determines such delegation is necessary for the proper operation of the Seaway.

(e) Factors considered in the issue of regulations.

In carrying out his duties and responsibilities under this chapter to promote the safe and efficient conduct of maritime commerce the Secretary shall consider fully the wide variety of interests which may be affected by the exercise of his authority hereunder. In determining the need for, and the substance of, any rule or regulation or the exercise of other authority hereunder the Secretary shall, among other things, consider—

(1) the scope and degree of the hazards;

(2) vessel traffic characteristics including minimum interference with the flow of commercial traffic, traffic volume, the sizes and types of vessels, the usual nature of local cargoes, and similar factors;

(3) port and waterway configurations and the differences in geographic, climatic, and other conditions and circumstances;

(4) environmental factors;

(5) economic impact and effects;

(6) existing vessel traffic control systems, services, and schemes; and

(7) local practices and customs, including voluntary arrangements and agreements within the maritime community.

(Pub. L. 92–340, title I § 102, July 10, 1972, 86 Stat. 425.)

§ 1223. Investigatory powers of Secretary; production of witnesses and documents; proceedings for compliance with subpenas; fees and allowances of witnesses.

The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this chapter, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. In any investigation under this chapter, the Secretary may issue a subpena to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States. (Pub. L. 92–340, title I, § 103, July 10, 1972, 86 Stat. 426.)

§ 1224. Rules and regulations.

The Secretary may issue reasonable rules, regulations, and standards necessary to implement this chapter. In the exercise of his rulemaking authority the Secretary is subject to the provisions of chapters 5 and 7 of Title 5. In preparing proposed rules, regulations, and standards, the Secretary shall provide an adequate opportunity for consultation and comment to State and local governments, representatives of the marine industry, port and harbor authorities, environmental groups, and other interested parties. (Pub. L. 92–340, title I, § 104, July 10, 1972, 86 Stat. 427.)

§ 1225. Report to Congress.

The Secretary shall, within one year after July 10,

1972, report to the Congress his recommendations for legislation which may be necessary to achieve coordination and/or eliminate duplication between the functions authorized by this Act and the functions of any other agencies. (Pub. L. 92–340, title I, § 105, July 10, 1972, 86 Stat. 427.)

§ 1226. Civil penalties; proceedings for collection.

Whoever violates a regulation issued under this chapter shall be liable to a civil penalty of not more than $10,000. The Secretary may assess and collect any civil penalty incurred under this chapter and, in his discretion, remit, mitigate, or compromise any penalty. Unpon failure to collect or compromise a penalty, the Secretary may request the Attorney General to commence an action for collection in any district court of the United States. A vessel used or employed in a violation of a regulation under this chapter shall be liable in rem and may be proceeded against in any district court of the United States having jurisdiction. (Pub. L. 92–340, title I, § 106, July 10, 1972, 86 Stat. 427.)

§ 1227. Criminal penalties.

Whoever willfully violates a regulation issued under this chapter shall be fined not less than $5,000 or more than $50,000 or imprisoned for not more than five years, or both. (Pub. L. 92–340, title I, § 107, July 10, 1972, 86 Stat. 427.)

24. Privileges of Vessels of the United States Employed in Fisheries; Landing of Foreign Vessels in Virgin Islands; Enrollment

46 U.S.C. 251–252

§ 251. Vessels entitled to privileges of vessels employed in coasting trade or fisheries; landing of catch of fish by foreign-flag vessels; sale or transfer for immediate consumption; forfeitures and penalties.

(a) Vessels of twenty tons and upward, enrolled in pursuance of sections 251 to 255, 258, 259, 262 to 280, 293, 306 to 316, 318, 321 to 330 and 333 to 335 of this title, and having a license in force, or vessels of less than twenty tons, which, although not enrolled, have a license in force, as required by such sections, and no others, shall be deemed vessels of the United States entitled to the privileges of vessels employed in the coasting trade or fisheries. Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.

(b) Subsection (a) of this section shall not be deemed to prohibit the landing by a foreign-flag vessel of not more than fifty feet overall length in a port of the Virgin Islands of the United States for immediate consumption in such islands of its catch of fresh fish, whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced. No fish landed under this authorization shall be sold or transferred except for immediate consumption. Sale or transfer to an agent, representative, or employee of a freezer or cannery shall be deemed to be prohibited in the absence of satisfactory evidence that such sale or transfer is for immediate consumption. For the purposes of this subsection, the term "immediate consumption" shall not preclude the freezing, smoking, or other processing of such fresh fish by the ultimate consumer thereof.

(c) Any fish landed in the Virgin Islands of the United States which are retained, sold, or transferred other than as authorized in subsection (b) of this section shall be liable to forfeiture and any person or persons retaining, selling, transferring, purchasing, or receiving such fish shall severally be liable to a penalty of $1,000 for each offense, in addition to any other penalty provided in law. (R.S. § 4311; Sept. 2, 1950, ch. 842, 64 Stat. 577; Sept. 13, 1961, Pub. L. 87–220, § 1, 75 Stat. 493.)

AMENDMENTS

1961—Pub. L. 87–220 designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

1950—Act Sept. 2, 1950, added second sentence to increase protection to American fishermen.

§ 251a. Remission or mitigation of fines, penalties or forfeitures.

Any fine, penalty, or forfeiture incurred under the provisions of this Act shall be subject to remission or mitigation in accordance with section 7 of this title. (Pub. L. 87–220, § 2, Sept. 13, 1961, 75 Stat. 493.)

§ 251b. Regulations.

The Secretary of the Treasury may issue such regulations as he deems necessary for the enforcement of the provisions of this Act. (Pub. L. 87–220, § 3, Sept. 13, 1961, 75 Stat. 493.)

§ 252. Vessels which may be enrolled.

In order for the enrollment of any vessel, she shall possess the same qualifications, and the same requirements in all respects shall be complied with, as are required before registering a vessel; and the same powers and duties are conferred and imposed upon all officers, respectively, and the same proceedings shall be had, in enrollment of vessels, as are prescribed for similar cases in registering; and vessels enrolled, with the masters or owners thereof, shall be subject to the same requirements as are prescribed for registered vessels. (R.S. § 4312.)

25. Prohibition of Certain Foreign Fishing Vessels in U.S. Fisheries

16 U.S.C. 1100 to 1100a–3

Sec.
1100. Prohibited activities.
1100a. Violations and penalties; separate violations; forfeitures.
1100a–1. Enforcement.
(a) Issuance of warrants or other process.
(b) Joint responsibility.
(c) Execution of warrants or process.
(d) Search of vessels.
(e) Seizure and disposition of prohibited fish.
(f) Bond or stipulation to stay execution of process or discharge seized fish; approval of surety; conditions: delivery, money payment, or answer to decree; return; judgment upon breach of conditions; proceeds in registry of court.
1100a–2. Regulations.
1100a–3. Definitions.

§ 1100. Prohibited activities.

During the five-year period beginning on October 27, 1972, it shall be unlawful for any person on board any prohibited vessel—

(1) to transfer at sea or cause to be transferred at sea any prohibited fish; or

(2) to land or cause to be landed any prohibited fish in any port of the United States.

(Pub. L. 92–601, § 1, Oct. 27, 1972, 86 Stat. 1327.)

§ 1100a. Violations and penalties; separate violations; forfeitures.

(a) Any person who knowingly—

(1) violates section 1100 of this title;

(2) takes, sells, transfers, purchases, or receives any prohibited fish which are transferred or landed in violation of section 1100 of this title; or

(3) violates any regulation issued pursuant to section 1100a–2 of this title;

shall be liable to a civil penalty of not more than $1,000, in addition to any other penalty provided by law. Each separate unlawful transfer or landing of prohibited fish shall constitute a separate violation of section 1100 of this title.

(b) Any prohibited fish transferred or landed in violation of section 1100 of this title, or the monetary value thereof, shall be subject to forfeiture. (Pub. L. 92–601, § 2, Oct. 27, 1972, 86 Stat. 1327.)

§ 1100a–1. Enforcement.

(a) Issuance of warrants or other process.

The judges of the United States district courts and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and the regulations issued pursuant thereto.

(b) Joint responsibility.

Enforcement of this chapter and the regulations issued pursuant thereto shall be the joint responsibility of the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating.

(c) Execution of warrants or process.

Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter and the regulations issued pursuant thereto.

(d) Search of vessels.

Such person so authorized shall have the power, with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States.

(e) Seizure and disposition of prohibited fish.

Such person so authorized may seize, whenever and wherever lawfully found, all prohibited fish transferred, landed, taken, sold, purchased, or received in violation of the provisions of this chapter or the regulations issued pursuant thereto. Any prohibited fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary concerned.

(f) Bond or stipulation to stay execution of process or discharge seized fish; approval of surety; conditions: delivery, money payment, or answer to decree; return; judgment upon breach of conditions; proceeds in registry of court.

Notwithstanding the provisions of section 2464 of Title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any prohibited fish seized if the process has been levied, on receiving from the claimant of the prohibited fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the violation, conditioned to deliver the prohibited fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the prohibited fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case. (Pub. L. 92–601, § 3, Oct. 27, 1972, 86 Stat. 1327.)

§ 1100a–2. Regulations.

The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating are authorized jointly and severally to issue such regulations as may be necessary to carry out the provisions of this chapter. (Pub. L. 92–601, § 4, Oct. 27, 1972, 86 Stat. 1328.)

§ 1100a–3. Definitions.

As used in this chapter—

(1) The term "person" means a person as defined in section 1 of Title 1.

(2) The term "prohibited fish" means, with respect to any prohibited vessel, the fish, mollusk, crustacean, or other form of marine animal or plant life which such vessel was authorized to engage in the catching of before the prohibition described in paragraph (3)(C) of this section was imposed on such vessel by the foreign country concerned.

(3) The term "prohibited vessel" means any vessel of less than five net tons which was—

(A) constructed in a foreign country,

(B) used in a fishery of such foreign country, and

(C) subsequently prohibited by such foreign country from being used in such fishery;

but does not mean any such vessel which was acquired by a citizen of the United States or a resident alien before October 27, 1972.

(Pub. L. 92–601, § 5, Oct. 27, 1972, 86 Stat. 1328.)

26. Registration of Vessels

46 U.S.C. 11

§ 11. Vessels entitled to registry; coastwise trade; ocean mail service contracts.

Vessels built within the United States and belonging wholly to citizens thereof; and vessels which may be captured in war by citizens of the United States and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States; and seagoing vessels, whether steam or sail, which have been certified by the Coast Guard as safe to carry dry and perishable cargo, wherever built, which are to engage only in trade with foreign countries, with the Islands of Guam, Tutuila, Wake, Midway, and Kingman Reef, being wholly owned by citizens of the United States and no others or corporations organized and chartered under the laws of the United States, or of any State thereof, of which the President or other chief executive officer and the chairman of the board of directors shall be citizens of the United States and no more of its directors than a minority of the number necessary to constitute a quorum shall be noncitizens, may be registered as directed in this chapter and chapters 3, 4, 5, 6, 7, 8, and 9 of this title. Foreign-built vessels registered pursuant to this section shall not engage in the coastwise trade: *Provided*, That such vessels so admitted under the provisions of this section may contract with the Postmaster General under act March 3, 1891, ch. 519, 26 Stat. 830, so long as such vessels shall in all respects comply with the provisions and requirements of said sections. (R.S. § 4132; Aug. 24, 1912, ch. 390, § 5, 37 Stat. 562; Aug. 18, 1914, ch. 256, § 1, 38 Stat. 698; Sept. 21, 1922, ch. 356, § 321, 42 Stat. 947; June 30, 1932, ch. 314, § 501, 47 Stat. 415; May 27, 1936, ch. 463, § 1; 49 Stat. 1380; May 24, 1938, ch. 265, 52 Stat. 437; 1946 Proc. No. 2695, July 4, 1946, 11 F. R. 7517, 60 Stat. 1352; 1946 Reorg. Plan No. 3, §§ 101—104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Sept. 21, 1959, Pub.L. 86–327, § 1, 73 Stat. 597.)

AMENDMENTS

1959—Pub. L. 86–327 redefined citizenship qualification for corporations by substituting requirement that the president or other chief executive officer and the chairman of the board of directors be United States citizens and that no more of the directors than a minority of the number necessary to constitute a quorum be noncitizens for requirement that the president and managing directors be United States citizens.

1938—Act May 24, 1938 in first sentence, added reference to Wake, Midway, and Kingman Reef.

27. Retaliation Against Foreign Countries Suspending or Denying Privileges to United States Vessels

46 U.S.C. 142–143

§ 142. Retaliatory suspension of commercial privileges to foreign vessels.

Whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbors, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is authorized to issue his proclamation excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said proclamation from the exercise of any commercial privileges shall do any act prohibited by said proclamation in the ports, harbors, or waters of the United States for or on account of such vessel, such vessel, and its rigging, tackle, furniture, and boats, and all

the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this section, or aiding and abetting any other person in such opposition, shall forfeit $800, and shall be guilty of a misdemeanor, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years. (June 19, 1886, ch. 421, § 17, 24 Stat. 82.)

§ 143. Retaliation on denial of rights to United States vessels in British North America.

Whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are or then lately have been unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favored nation, or shall be unjustly vexed or harassed, in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favored nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters, or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters, or crews, of the most favored nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessel shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this section. Every violation of any such proclamation, or any part thereof, is declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may be enforced and proceeded upon. Every person who shall violate any of the provisions of this section, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court. (Mar. 3, 1887, ch. 339, 24 Stat. 475.)

28. Seizure of Vessels of the United States by Foreign Countries

22 U.S.C. 1971–1979

Sec.

§ 1971. Definition.

For the purposes of this chapter the term "vessel of the United States" shall mean any private vessel documented or certificated under the laws of the United States. (Aug. 27, 1954, ch. 1018, § 1, 68 Stat. 883.)

§ 1972. Action by Secretary of State upon seizure of vessel by foreign country.

If—

(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

(A) are unrelated to fishery conservation and management,

(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

(i) for the protection of such vessel and for the health and welfare of its crew;

(ii) to secure the release of such vessel and its crew; and

(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act. (As amended Oct. 26, 1972, Pub. L. 92–569, § 1, 86 Stat. 1182; Apr. 13, 1976, Pub. L. 94–265, § 403(a)(1), 90 Stat. 360.)

AMENDMENTS

1976—Subsec. (a)(1) of Pub. L. 94–265 § 403 revised this section.

1972—Subsec. (b). Pub. L. 92–569 required the Secretary of State to take appropriate action to immediately ascertain the fees, fines, and other direct charges paid by a United States vessel owner to the seizing foreign country for the release of the vessel and its crew.

§ 1973. Reimbursement of owner for any direct charges paid to secure release of vessel and crew.

(a) In any case where a vessel of the United States is seized by a foreign country under the conditions of section 1972 of this title and a fine, license fee, registration fee, or any other direct charge must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of the Treasury in the amount certified to him by the Secretary of State as being the amount of the fine, license fee, registration fee, or any other direct charge actually paid. Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 1979 of this title. For purposes of this section, the term 'other direct charge' means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.

(b) The Secretary of State shall make a certification under subsection (a) of this section as soon as possible after he is notified pursuant to section 1972 (b) of this title of the amounts of the fines, fees, and other direct charges which were paid by the owners to secure the release of their vessel and crew. The amount of reimbursement made by the Secretary of the Treasury to the owners of any vessel under subsection (a) of this section shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be. Any such lien shall terminate on the ninetieth day after the date on which the Secretary of the Treasury reimburses the owners under this section unless before such ninetieth day the United States initiates action to enforce the lien. (As amended Oct. 26, 1972, Pub. L. 92–569, § 2, 86 Stat. 1182; Apr. 13, 1976, Pub. L. 94–265, § 403(a)(2), 90 Stat. 360.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–265, § 403(a)(2) added the last sentence.

1972—Subsec. (a). Pub. L. 92–569 designated existing provisions as subsec. (a), and in subsec. (a) as so designated, added provision that reimbursement under this section shall be made from the Fishermen's protective Fund.

Subsec. (b). Pub. L. 92—569 added subsec. (b).

1968—Pub. L. 90–482 added ", license fee, registration fee, or any other direct charge" following "fine" wherever appearing.

§ 1974. Inapplicability of chapter to certain seizures.

The provisions of this chapter shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of any fishery convention or treaty to which the United States is a party. (Aug. 27, 1954, ch. 1018, § 4, 68 Stat. 883.)

§ 1975. Action by Secretary on claims for amounts expended because of seizure; withholding amount of unpaid claim from foreign assistance funds.

(a) The Secretary of State shall—

(1) immediately notify a foreign country of—

(A) any reimbursement made by the Secretary of the Treasury under section 1973 of this title as a result of the seizure of a vessel of the United States by such country,

(B) any payment made pursuant to section 1977 of this title in connection with such seizure, and

(2) take such action as he deems appropriate to make and collect claims against such foreign country for the amounts so reimbursed and payments so made.

(b) If a foreign country fails or refuses to make payment in full on any claim made under subsection (a)(2) of this section within one hundred and twenty days after the date on which such country is notified pursuant to subsection (a)(1) of this section, the Secretary of State shall transfer an amount equal to such unpaid claim or unpaid portion thereof from any funds appropriated by Congress and programed for the current fiscal year for assistance to the government of such country under the Foreign Assistance Act of 1961 unless the President certifies to the Congress that it is in the national interest not to do so in the particular instance (and if such funds are insufficient to cover such claim, transfer shall be made from any funds so appropriated and programed for the next and any succeeding fiscal year) to (1) the Fishermen's Protective Fund established pursuant to section 1979 of this title if the amount is transferred with respect to an unpaid claim for a reimbursement made under section 1973 of this title, or (2) the separate account established in the Treasury of the United States pursuant to section 1977(c) of this title if the amount is transferred with respect to an unpaid claim for a payment made under section 1977(a) of this title. Amounts transferred under this section shall not constitute satisfaction of any such claim of the United States against such foreign country. (As amended Oct. 26, 1972, Pub. L. 92–569, § 3, 86 Stat. 1182.)

AMENDMENTS

1972—Pub. L. 92–569 substituted provisions that the Secretary of State notify the foreign country of reimbursements made under section 1973 of this title and payments made under section 1977 of this title, take appropriate action to make and collect claims against such foreign country and on failure to receive payment or on refusal to pay within 120 days after the notification, transfer an amount equal to the unpaid amount from funds programmed for assistance to that country to the Fishermen's Protective Fund or the separate account in the Treasury as the case may be, and in the case of inadequate funds programmed in the current fiscal year make the deduction from suceeding fiscal years, with exception that no such transfer be made when the President certifies to Congress that it is in the national interest not to do so, for provisions that the Secretary of State take appropriate action to collect claims against such foreign country and withhold amounts equal to the unpaid claims from the foreign assistance programmed for that fiscal year when such country fails or refuses to pay within 120 days of receipt of notice of claim.

1968—Pub. L. 90–482 added provisions authorizing the Secretary to act when payments are made pursuant to section 1977 of this title, and provisions authorizing the Secretary to withhold the amount of any unpaid claim against the foreign country from the foreign assistance funds programed for that country, such amounts withheld not to constitute satisfaction of any unpaid claim.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–569 applicable with respect to seizures of vessels of the United States occurring on or after Oct. 26, 1972, see section 6 of Pub. L. 92–569, set out as a note under section 1972 of this title.

§ 1976. Authorization of appropriations.

There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this chapter. (Aug. 27, 1954, ch. 1018, § 6, 68 Stat. 883.)

§ 1977. Reimbursement for seized commercial fishermen.

(a) Agreement to reimburse for actual costs, confiscation or spoilage of fish, and loss of income.

The Secretary, upon receipt of an application filed with him at any time after the effective date of this section by the owner of any vessel of the United States which is documented or certificated as a commercial fishing vessel, shall enter into an agreement with such owner subject to the provision of this section and such other terms and conditions as the Secretary deems appropriate. Such agreement shall provide that, if said vessel is seized by a foreign country and detained under the conditions of section 1972 of this title, the Secretary shall guarantee—

(1) the owner of such vessel for all actual costs, except those covered by section 1973 of this title, incurred by the owner during the seizure and detention period and as a direct result thereof, as determined by the Secretary, resulting (A) from any damage to, or destruction of, such vessel, or its fishing gear or other equipment, (B) from the loss or confiscation of such vessel, gear, or equipment, or (C) from dockage fees or utilities;

(2) the owner of such vessel and its crew for the market value of fish caught before seizure of such vessel and confiscated or spoiled during the period of detention; and

(3) the owner of such vessel and its crew for not to exceed 50 per centum of the gross income lost as a direct result of such seizure and detention, as determined by the Secretary of the Interior, based on the value of the average catch per day's fishing during the three most recent calendar years immediately preceding such seizure and detention of the vessel seized, or, if such experience is not available, then of all commercial fishing vessels of the United States engaged in the same fishery as that of the type and size of the seized vessel.

(b) Distribution of payments according to commercial fishing practices and procedures.

Payments made by the Secretary under paragraphs (2) and (3) of subsection (a) of this section shall be distributed by the Secretary in accordance with the usual practices and procedures of the particular segment of the United States commercial fishing industry to which the seized vessel belongs relative to the sale of fish caught and the distribution of the proceeds of such sale.

(c) Establishment of fees; amount of fees; credit of fees to separate Treasury account; payment from collected fees; authorization of appropriations.

The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section. The amount fixed by

the Secretary shall be predicated upon at least 33⅓ per centum of the contribution by the Government. All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. If a transfer of funds is made to the separate account under section 1975(b)(2) of this title with respect to an unpaid claim and such claim is later paid, the amount so paid shall be covered into the Treasury as miscellaneous receipts. All payments under this section shall be made first out of such fees so long as they are available and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

(d) Finality of determinations; insured losses.

All determinations made under this section shall be final. No payment under this section shall be made with respect to any losses covered by any policy of insurance or other provision of law.

(e) Effective date; rules and regulations.

The provisions of this section shall be effective until October 1, 1977.

(f) Definitions.

For the purposes of this section—

(1) the term "Secretary" means the Secretary of Commerce.

(2) the term "owner" includes any charterer of a commercial fishing vessel.

(As amended Oct. 26, 1972, Pub. L. 92–569, § 4, 86 Stat. 1183; Oct. 27, 1972, Pub. L. 92–594, §§ 1, 2, 86 Stat. 1313.)

AMENDMENTS

1972—Subsec. (c). Pub. L. 92–569 added provision that amounts paid subsequent to transfer to the separate account be covered into the Treasury as miscellaneous receipts.

Subsec. (e). Pub. L. 92–594, § 1, extended the provisions of this section until July 1, 1977, and struck out provisions relating to the issuance of regulations.

Subsec. (f)(1). Pub. L. 92–594, § 2, substituted "Secretary of Commerce" for "Secretary of the Interior".

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–569 applicable with respect to seizure of vessels of the United States occurring on or after Oct. 26, 1972, see section 6 of Pub. L. 92–569, set out as a note under section 1972 of this title.

§ 1978. Restriction on importation of fishery products from countries which violate international fishery conservation program.

(a) Certification to President.

When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President. Upon receipt of such certification, the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of fish products of the offending country for such duration as he determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.

(b) Notification to Congress.

Within sixty days following certification by the Secretary of Commerce, the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products of the offending country, or if such prohibition does not cover all fish products of the offending country, the President shall inform the Congress of the reasons therefor.

(c) Importation of fish products from offending country prohibited.

It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any fish products prohibited by the Secretary of the Treasury pursuant to this section.

(d) Penalties; forfeiture; customs laws.

(1) Any person violating the provisions of this section shall be fined not more than $10,000 for the first violation, and not more than $25,000 for each subsequent violation.

(2) All fish products brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with this section.

(e) Enforcement.

(1) Enforcement of the provisions of this section prohibiting the bringing or importation of fish products into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United States commissioners[1] may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and regulations issued thereunder.

(3) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder;

(B) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search

[1] So in original. Reference was probably intended to United States magistrates. See section 631 et seq. of Title 28, Judiciary and Judicial Procedure.

he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all fish products brought or imported into the United States in violation of this section or the regulations issued thereunder. Any fish products so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health, Education, and Welfare.

(f) Regulations.

The Secretary of the Treasury is authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(g) Definitions.

As used in this section—

(1) The term "person" means any individual, partnership, corporation, or association.

(2) The term "United States", when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands.

(3) The term "international fishery conservation program" means any ban, restriction, regulation, or other measure in force pursuant to a multilateral agreement to which the United States is a signatory party, the purpose of which is to conserve or protect the living resources of the sea.

(4) The term "fish products" means fish and marine mammals and all products thereof taken by fishing vessels of an offending country whether or not packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof.

(Aug. 27, 1954, ch. 1018, § 8, as added Dec. 23, 1971, Pub. L. 92–219, 85 Stat. 786.)

§ 1979. Fishermen's Protective Fund.

There is created a Fishermen's Protective Fund which shall be used by the Secretary of the Treasury to reimburse owners of vessels for amounts certified to him by the Secretary of State under section 1973 of this title. The amount of any claim or portion thereof collected by the Secretary of State from any foreign country pursuant to section 1975(a) of this title shall be deposited in the fund and shall be available for the purpose of reimbursing vessel owners under section 1973 of this title; except that if a transfer to the fund was made pursuant to section 1975 (b)(1) of this title with respect to any such claim, an amount from the fund equal to the amount so collected shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fund (1) the sum of $3,000,000 to provide initial capital, and (2) such additional sums as may be necessary from time to time to supplement the fund in order to meet the requirements of the fund. (Aug. 27, 1954, ch. 1018, § 9, as added Oct. 26, 1972, Pub. L. 92–569, § 5, 86 Stat. 1183.)

29. Transportation of Catch of Other Fishing Vessels

46 U.S.C. 404a

§ 404a. Fishing vessels; transfer and transportation of catch of other vessels.

For the purposes of the laws of the United States relating to documentation and inspection of vessels of the United States, a vessel enrolled and licensed, or licensed as a vessel of the United States to engage in the fishery, shall not be deemed to be used in employment for which not licensed, and shall not be considered as engaged in the transportation of freight for hire, solely because such vessel occasionally takes on board on the high seas and transports without a monetary consideration to a port of the United States, the catch of another fishing vessel of the United States. (Pub. L. 87–177, Aug. 30, 1961, 75 Stat. 410.)

TITLE VIII—OCEANOGRAPHY

1. Bureau of Oceans and International Scientific Affairs

22 U.S.C. 2655a

§ 2655a. Bureau of Oceans and International Environmental and Scientific Affairs within Department of State; Assistant Secretary of State as head of Bureau.

There is established within the Department of State a Bureau of Oceans and International Environmental and Scientific Affairs. In addition to the positions provided under section 2652 of this title, there shall be an Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, appointed by the President, by and with the advice and consent of the Senate, who shall be the head of the Bureau and who shall have responsibility for matters relating to oceans, environmental, scientific, fisheries, wildlife, and conservation affairs. (Pub. L. 93–126, § 9(a), formerly § 9, Oct. 18, 1973, 87 Stat. 453, renumbered Pub. L. 93–312, § 9, June 8, 1974, 88 Stat. 238.)

2. Coast and Geodetic Survey

33 U.S.C. 883a–888

§ 883a. Surveys and other activities.

To provide charts and related information for the safe navigation of marine and air commerce, and to provide basic data for engineering and scientific purposes and for other commercial and industrial needs, the Director of the Coast and Geodetic Survey, hereinafter referred to as the Director, under direction of the Secretary of Commerce, is authorized to conduct the following activities:

(1) Hydrographic and topographic surveys;

(2) Tide and current observations;

(3) Geodetic-control surveys;

(4) Field surveys for aeronautical charts;

(5) Geomagnetic, seismological, gravity, and related geophysical measurements and investigations, and observations for the determination of variation in latitude and longitude. (Aug. 6, 1947, ch. 504, § 1, 61 Stat. 787; Apr. 5, 1960, Pub. L. 86–409, 74 Stat. 16.)

AMENDMENTS

1960—Pub. L. 86–409 eliminated provisions which restricted the Coast and Geodetic Survey in the conduct of its specified activities to the United States, its Territories and possessions, and which restricted hydrographic and topographic surveys to surveys of coastal water and land areas (including offlying islands, banks, shoals, and other offshore areas), and to surveys of lakes, rivers, reservoirs, and other inland waters not otherwise provided for by statute.

§ 883b. Dissemination of data; further activities.

In order that full public benefit may be derived from the operations of the Coast and Geodetic Survey by the dissemination of data resulting from the activities herein authorized and of related data from other sources, the Director is authorized to conduct the following activities:

(1) Analysis and prediction of tide and current data;

(2) Processing and publication of data, information, compilations, and reports;

(3) Compilation and printing of aeronautical charts of the United States, its Territories, and possessions; and, in addition, the compilation and printing of such aeronautical charts covering international airways as are required primarily by United States Civil aviation;

(4) Compilation and printing of nautical charts of the United States, its Territories, and possessions;

(5) Distribution of aeronautical charts and related navigational publications required by United States civil aviation;

(6) Distribution of nautical charts and related navigational publications for the United States, its Territories, and possessions.

(Aug. 6, 1947, ch. 504, § 2, 61 Stat. 787.)

§ 883c. Geomagnetic data; collection, correlation, and dissemination.

To provide for the orderly collection of geomagnetic data from domestic and foreign sources, and to assure that such data shall be readily available to Government and private agencies and individuals, the Coast and Geodetic Survey is designated as the central depository of the United States Government for geomagnetic data, and the Director is authorized to collect, correlate, and disseminate such data. (Aug. 6, 1947, ch. 504, § 3, 61 Stat. 787.)

§ 883d. Improvement of methods, instruments, and equipments; investigations and research.

To improve the efficiency of the Coast and Geodetic Survey and to increase engineering and scientific knowledge, the Director is authorized to conduct developmental work for the improvement of surveying and cartographic methods, instruments, and equipments; and to conduct investigations and research in geophysical sciences (including geodesy, oceanography, seismology, and geomagnetism). (Aug. 6, 1947, ch. 504, § 4, 61 Stat. 788.)

§ 883e. Cooperative agreements for surveys and investigations.

The Director is authorized to enter into cooperative agreements with, and to receive and expend funds made available by, any State or subdivision thereof, or any public or private organization, or individual, for surveys or investigations authorized herein, or for performing related surveying and mapping activities, including special-purpose maps, and for the preparation and publication of the results thereof. (Aug. 6, 1947, ch. 504, § 5, 61 Stat. 788.)

§ 883f. Contracts with qualified organizations.

The Director is authorized to contract with qualified organizations for the performance of any part of the authorized functions of the Coast and Geodetic Survey when he deems such procedure to be in the public interests. (Aug. 6, 1947, ch. 504, § 6, 61 Stat. 788.)

§ 883g. Repealed. Pub. L. 88-611, § 4(a)(2), Oct. 2, 1964, 78 Stat. 991.

Section, act Aug. 6, 1947, ch. 504, § 7, 61 Stat. 788, provided for acceptance of gifts or bequests and exemption from Federal taxes, and is now covered by sections 1522 and 1523 of Title 15, Commerce and Trade.

§ 883h. Employment of public vessels.

The President is authorized to cause to be employed such of the public vessels as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper in order to carry out the provisions of sections 883a to 883i of this title. (Aug. 6, 1947, ch. 504, § 8, 61 Stat. 788.)

§ 883i. Appropriations.

There are authorized to be appropriated such funds as may be necessary to acquire, construct, maintain, and operate ships, stations, equipment, and facilities and for such other expenditures, including personal services at the seat of government and elsewhere and including the erection of temporary observatory buildings and lease of sites therefor, as may be necessary for the conduct of the activities herein authorized. (Aug. 6, 1947, ch. 504, § 9, 61 Stat. 788.)

§ 884. Power to use books, maps, etc., and to employ persons.

The President is authorized, in executing the provisions of sections 881 to 883 of this title relating to the coast survey, to use all maps, charts, books, instruments, and apparatus belonging to the United States, and to direct where the same shall be deposited, and to employ all persons in the land or naval service of the United States, and such astronomers and other persons as he shall deem proper. (R. S. § 4685.)

§ 885. Repealed. Aug. 6, 1947, ch. 504, § 10 (6), 61 Stat. 788.

Section, R. S. § 4686, related to the use of public vessels on coast surveys, and is now covered by section 883h of this title.

§§ 886, 887. Repealed. June 21, 1955, ch. 172, § 5 (1), (2), 69 Stat. 170.

Section 886, R. S. § 4687, related to employment of officers of Army and Navy in the work of surveying the coast of the United States.

Section 887, R. S. § 4688; acts Aug. 30, 1890, ch. 837, § 1, 26 Stat. 382; June 5, 1920, ch. 235, § 1, 41 Stat. 929, provided for allowance for subsistence to officers of Army and Navy while employed on coast survey service.

ADDITIONAL REPEAL

Sections were also repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641. Section 49 (a) of act Aug. 10, 1956, provided in part that laws effective after Mar. 31, 1955, inconsistent with that act, should be considered as superseding it to the extent of the inconsistency.

§ 888. Report to Congress on expenditures.

The Secretary of Commerce shall report to Congress annually a full statement of all expenditures, other than the amount of compensation paid persons employed during the last preceding fiscal year upon the coast survey and business connected therewith, made under the direction of the Director of the Coast and Geodetic Survey. (R. S. § 264; Feb. 14, 1903, ch. 552, §§ 4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; June 5, 1920, ch. 235, § 1, 41 Stat. 929; May 29, 1928, ch. 901, § 1 (104), 45 Stat. 994; Aug. 30, 1954, ch. 1076, § 1 (13), 68 Stat. 967.)

§§ 889, 890. Repealed. June 21, 1955, ch. 172, § 5 (5), 69 Stat. 170.

Section 889, acts Mar. 4, 1909, ch. 313, § 1, 35 Stat. 1064; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, authorized cooperation with North Carolina State Fish Commission in survey of waters of State.

Section 890, acts Mar. 4, 1909, ch. 313, § 2, 35 Stat. 1065; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, provided for marking triangulation points of North Carolina survey.

3. Coast Guard Research

14 U.S.C. 2, 94

§ 2. Primary duties.

The Coast Guard shall enforce or assist in the enforcement of all applicable Federal laws on or under the high seas and waters subject to the jurisdiction of the United States; shall administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction

of the United States covering all matters not specifically delegated by law to some other executive department; shall develop, establish, maintain, and operate, with due regard to the requirements of national defense, aids to maritime navigation, icebreaking facilities, and rescue facilities for the promotion of safety on, under, and over the high seas and waters subject to the jurisdiction of the United States; shall, pursuant to international agreements, develop, establish, maintain, and operate icebreaking facilities on, under, and over waters other than the high seas and waters subject to the jurisdiction of the United States; shall engage in oceanographic research of the high seas and in waters subject to the jurisdiction of the United States; and shall maintain a state of readiness to function as a specialized service in the Navy in time of war. (Aug. 4, 1949, ch. 393, 63 Stat. 496, amended Oct. 5, 1961, Pub. L. 87–396, § 1, 75 Stat. 827; June 12, 1970, Pub. L. 91–278, § 1(1), 84 Stat. 304; Dec. 13, 1974, Pub. L. 93–519, 88 Stat. 1659.)

AMENDMENTS

1974—Pub. L. 93–519 added the provision requiring the Coast Guard to develop, establish, maintain and operate, pursuant to international agreements, icebreaking facilities in waters other than those subject to the jurisdiction of the United States.

HISTORICAL AND REVISION NOTES

Reviser's Note. This section defines in general terms, for the first time in any statute, all the primary duties of the Coast Guard. It is derived from title 14, U. S. C., 1946 ed., §§ 45, 50k—50o, 51, 52, 53, 55, 60, 61, 62, 63, 98a, 104, 261, 301, title 33, U. S. C., 1946 ed., §§ 720, 720a, 740, 740a, 740b, title 46, U. S. C., 1946 ed., §§ 1 (footnote), 2 (R. S. 1536, 2747, 2758, 2759, 4249; June 23, 1874, ch. 455, § 1, 18 Stat. 220; June 18, 1878, ch. 265, § 4, 20 Stat. 163; July 5, 1884, ch. 221, § 2, 23 Stat. 118; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Apr. 19, 1906, ch. 1640, §§ 1—3, 34 Stat. 123; May 12, 1906, ch. 2454, 34 Stat. 190; June 17, 1910, ch. 301, §§ 6, 7, 36 Stat. 538; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; June 24, 1914, ch. 124, 38 Stat. 387; Mar. 3, 1915, ch. 81, § 5, 38 Stat. 927; Aug. 29, 1916, ch. 417, 39 Stat. 1820; May 22, 1926, ch. 371, § 6, 44 Stat. 626; June 30, 1932, ch. 314, § 501, 47 Stat. 415; May 27, 1936, ch. 463, § 1, 49 Stat. 1380; Aug. 16, 1937, ch. 665, § 3, 50 Stat. 667; Feb. 19, 1941, ch. 8, §§ 2, 201, 55 Stat. 9, 11; July 11, 1941, ch. 290, § 7, 55 Stat. 585; Nov. 23, 1942, ch. 639, § 2 (2), 56 Stat. 102; Sept. 30, 1944, ch. 453, § 1, 58 Stat. 759; June 22, 1948, ch. 600, 62 Stat. 574; June 26, 1948, ch. 672, 62 Stat. 1050).

This section contains a codification of functions. It sets forth in general language the primary responsibilities of the Coast Guard: enforcement of all Federal laws on waters to which they have application, safety of life and property at sea, aiding navigation, and readiness to function with the Navy. Having been created in 1915 by the consolidation of the Revenue Cutter Service and the Life Saving Service, the Coast Guard has gradually been given additional duties and responsibilities, such as the assignment of law enforcement powers on the high seas and navigable waters in 1936, the transfer of the Lighthouse Service in 1939, and the transfer of the Bureau of Marine Inspection and Navigation in 1942. Existing along with these other duties has been that of maintaining a state of readiness as a specialized service prepared for active participation with the Navy in time of war. These various interdependent functions of the Service have not been expressed collectively in any statute heretofore, but it is believed desirable to do so in this revision in order to have outlined in general terms in one section the broad scope of the functions of the Coast Guard. 81st Congress, House Report No. 557.

§ 94. Oceanographic research.

The Coast Guard shall conduct such oceanographic research, use such equipment or instruments, and collect and analyze such oceanographic data, in cooperation with other agencies of the Government, or not, as may be in the national interest. (Added Pub. L. 87–396, § 1, Oct. 5, 1961, 75 Stat. 827.)

4. Coastal Zone Management

16 U.S.C. 1451–1464

Sec.

§ 1451. Congressional findings.

The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(i) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone. (Pub. L. 89–454, title III, § 302, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280; and amended Pub. L. 94–370, § 2, July 26, 1976, 90 Stat. 1013.)

AMENDMENTS

1976—Subsec. (b) Pub. L. 94–370 added "ecological". Subsec. (i). Pub L. 94–370 added subsec. (i).

§ 1452. Congressional declaration of policy.

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems. (Pub. L. 89–454, title III, § 303, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1281.)

§ 1453. Definitions.

For purposes of this chapter—

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion or which is held in trust by the Federal Government, its officers or agents.

(2) The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (B) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(3) The term "coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this chapter, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(4) The term "coastal energy activity" means any of the following activities if, and to the extent that (A) the conduct, support, or facilitation of such

activity requires and involves the siting, construction, expansion, or operation of any equipment or facility; and (B) any technical requirement exists which, in the determination of the Secretary necessitates that the siting, construction, expansion, or operation of such equipment or facility be carried out in, or in close proximity to, the coastal zone of any coastal state;

(i) Any outer Continental Shelf energy activity.

(ii) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas.

(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 1502 of title 33).

For purposes of this paragraph, the siting, construction, expansion, or operation of any equipment or facility shall be "in close proximity to" the coastal zone of any coastal state if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(5) The term "energy facilities" means any equipment or facility which is or will be used primarily—

(A) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(B) for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A).

The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities, including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

(6) The term "estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(7) The term "estuarine sanctuary" means a research area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to such estuary, and which constitutes to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(8) The term "Fund" means the Coastal Energy Impact Fund established by section 1456a(h).

(9) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 1456(g).

(10) The term "local government" means any political subdvision of, or any special entity created by, any coastal state which (in whole or part) is located in, or has authority over, such state's coastal zone and which (A) has authority to levy taxes, or to establish and collect user fees, or (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. The term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(11) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(12) The term "outer Continental Shelf energy activity" means any exploration for, or any development or production of, oil or natural gas from the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development, or production.

(13) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

(14) The term "public facilities and public services" means facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary finds will support increased population.

(15) The term "Secretary" means the Secretary of Commerce.

(16) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 1456(f) of this title. (Pub. L. 89–454, title III, § 304, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 12810, and amended Pub. L. 94–370, § 3, July 26, 1976, 90 Stat. 1013.)

§ 1454. Management program development grants.

(a) The Secretary may make grants to any coastal state—

(1) under subsection (c) for the purpose of assisting such state in the development of a management program for the land and water resources of its coastal zone; and

(2) under subsection (d) for the purpose of assisting such state in the completion of the development, and the initial implementation, of its management program before such state qualifies for administrative grants under section 1455.

(b) The management program for each coastal state shall include each of the following requirements:

(1) An identification of the boundaries of the coastal zone subject to the management program.

(2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(3) An inventory and designation of areas of particular concern within the coastal zone.

(4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

(5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(6) A description of the organizational structure proposed to implement such management program, including the responsibilties and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(7) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

(9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

No management program is required to meet the requirements in paragraphs (7), (8), and (9) before October 1, 1978.

(c) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(1) if such state reasonably demonstrates to the satisfaction of the Secretary that such grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed 80 per centum of such state's costs for such purposes in any one year. No coastal state is eligible to receive more than four grants pursuant to this subsection. After the initial grant is made to any coastal state pursuant to this subsection, no subsequent grant shall be made to such state pursuant to this subsection unless the Secretary finds that such state is satisfactorily developing its management program.

(d)(1) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(2) if the Secretary finds that such state meets the eligibility requirements set forth in paragraph (2). The amount of any such grant shall not exceed 80 per centum of the costs for such purposes in any one year.

(2) A coastal state is eligible to receive grants under this subsection if it has—

(A) developed a management program which—

(i) is in compliance with the rules and regulations promulgated to carry out subsection (b), but

(ii) has not yet been approved by the Secretary under section 1455;

(B) specifically identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval by the Secretary pursuant to section 306, and has established a reasonable time schedule during which it can remedy any such deficiency;

(C) specified the purposes for which any such grant will be used;

(D) taken or is taking adequate steps to meet any requirement under section 1455 or 1456 which involves any Federal official or agency; and

(E) complied with any other requirement which the Secretary, by rules and regulations, prescribes as being necessary and appropriate to carry out the purposes of this subsection.

(3) No management program for which grants are made under this subsection shall be considered an approved program for purposes of section 1456.

(e) Grants under this section shall be made to, and allocated among, the coastal states pursuant to rules and regulations promulgated by the Secretary; except that—

(1) no grant shall be made under this section in an amount which is more than 10 per centum of the total amount appropriated to carry out the purposes of this section, but the Secretary may waive this limitation in the case of any coastal state which is eligible for grants under subsection (d); and

(2) no grant shall be made under this section in an amount which is less than 1 per centum of the total amount appropriated to carry out the purposes of this section, but the Secretary shall waive this limitation in the case of any coastal state which requests such a waiver.

(f) The amount of any grant (or portion thereof) made under this section which is not obligated by the coastal state concerned during the fiscal year for which it was first authorized to be obligated by such state, or during the fiscal year

immediately following, shall revert to the Secretary who shall add such amount to the funds available for grants under this section.

(g) With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

(h) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306. Whenever the Secretary approves the management program of any coastal state under section 306, such state thereafter—

(1) shall not be eligible for grants under this section; except that such state may receive grants under subsection (c) in order to comply with the requirements of paragraphs (7), (8), and (9) of subsection (b); and

(2) Shall be eligible for grants under section 1455.

(i) The authority to make grants under this section shall expire on September 30, 1979. (Pub. L. 89–454, title III, § 305, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1282, and amended Pub. L. 94–370, § 4, July 26, 1976, 90 Stat. 1015.)

AMENDMENTS

1976. Pub. L. 94–370 substantially revised this section.

§ 1455. Administrative grants.

(a) Authorization.

The Secretary may make a grant annually to any coastal state for not more than 80 per centum of the costs of administering such state's managemen program if the Secretary (1) finds that such program meets the requirements of section 1454(b), and (2) approves such program in accordance with subsections (c), (d), and (e).

(b) Allocation of grants.

Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided*, That no annual grant made under this section shall be in excess of $2,000,000 for fiscal year 1975, in excess of $2,500,000 for fiscal year 1976, nor in excess of $3,000,000 for fiscal year 1977: *Provided further*, That no annual grant made under this section shall be less than 1 per centum of the total amount appropriated to carry out the purposes of this section: *And provided further*, That the Secretary shall waive the application of the 1 per centum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

(c) Program requirements.

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this chapter and is consistent with the policy declared in section 1452 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 3334 of Title 42, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this chapter; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the lowing requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision, unless such local government waives its right to comment.

(iii) Such management agency, if any such comments are submitted to it, with such 30-day period, by any local government—

(I) is required to consider any such comments,

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within

such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are oher than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such consideration to any applicable interstate energy plan or program.

(9) The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Required authority for management of coastal zone.

Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 3334 of Title 42, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Required findings.

Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(f) Allocation to other political subdivisions.

With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 3334 of Title 42, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: *Provided,* That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(g) Program modification.

Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c). Except with respect to any such amendment which is made before October 1, 1978, for the purpose of complying with the requirements of paragraphs (7), (8), and (9) of section 1454(b), no grant shall be made under this section to any coastal state after the date of such an amendment or modification, until the Secretary approves such amendment or modification.

(h) Segmental development.

At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided,* That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable. (Pub. L. 89–454, title III, § 306, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1283, and amended Pub. L. 94–370, § 5, July 26, 1976, 90 Stat. 1017.)

§ 1456. coordination and cooperation.

(a) Federal agencies.

In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) Adequate consideration of views of Federal agencies; mediation of disagreements.

The Secretary shall not approve the management

program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered.

(c) Consistency of Federal activities with state management programs; certification.

(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3) (A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until—

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with suh certification is conclusively presumed, as provided for in subparagraph (A); or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by presumption under subparagraph (A) is 3 months.

(d) Application of local governments for Federal assistance; relationship of activities with approved management programs.

State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968. Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

(e) Construction with other laws.

Nothing in this chapter shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) **Construction with existing requirements of water and air pollution programs.**

Notwithstanding any other provision of this chapter, nothing in this chapter shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) **Concurrence with programs which affect inland areas.**

When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 1455 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

(h) In case of serious disagreement between any Federal agency and a coastal state—

(1) in the development or the initial implementation of a management program under section 1454; or

(2) in the administration of a management program approved under section 1455;

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local areas concerned. (Pub. L. 89–454, title III, § 307, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1285; and Pub. L. 94–370, § 6, July 26, 1976, 90 Stat. 1018.)

§ 1456a. Coastal energy impact program.

(a)(1) The Secretary shall administer and coordinate, as part of the coastal zone management activities of the Federal Government provided for under this chapter, a coastal energy impact program. Such program shall consist of the provision of financial assistance to meet the needs of coastal states and local governments in such states resulting from specified activities involving energy development. Such assistance, which includes—

(A) grants, under subsection (b), to coastal states for the purposes set forth in subsection (b)(4) with respect to consequences resulting from the energy activities specified therein;

(B) grants, under subsection (c), to coastal states for study of, and planning for, consequences relating to new or expanded energy facilities in, or which significantly affect, the coastal zones;

(C) loans, under subsection (d)(1), to coastal states and units of general purpose local government to assist such states and units to provide new or improved public facilities or public services which are required as a result of coastal energy activity;

(D) guarantees, under subsection (d)(2) and subject to the provisions of subsection (f), of bonds or other evidences of indebtedness issued by coastal states and units of general purpose local government for the purpose of providing new or improved public facilities or public services which are required as a result of coastal energy activity;

(E) grants or other assistance, under subsection (d)(3), to coastal states and units of general purpose local government to enable such states and units to meet obligations under loans or guarantees under subsection (d) (1) or (2) which they are unable to meet as they mature, for reasons specified in subsection (d)(3); and

(F) grants, under subsection (d)(4), to coastal states which have suffered, are suffering, or will suffer any unavoidable loss of a valuable environmental or recreational resource;

shall be provided, administered, and coordinated by the Secretary in accordance with the provisions of this section and under the rules and regulations required to be promulgated pursuant to paragraph (2). Any such financial assistance shall be subject to audit under section 1459.

(2) The Secretary shall promulgate, in accordance with section 1463, such rules and regulations (including, but not limited to, those required under subsection (e)) as may be necessary and appropriate to carry out the provisions of this section.

(b)(1) The Secretary shall make grants annually to coastal states, in accordance with the provisions of this subsection.

(2) The amounts granted to coastal states under this subsection shall be, with respect to any such state for any fiscal year, the sum of the amounts

calculated, with respect to such state, pursuant to subparagraphs (A), (B), (C), and (D):

(A) An amount which bears, to one-third of the amount appropriated for the purpose of funding grants under this subsection for such fiscal year, the same ratio that the amount of outer Continental Shelf acreage which is adjacent to such state and which is newly leased by the Federal Government in the immediately preceding fiscal year bears to the total amount of outer Continental Shelf acreage which is newly leased by the Federal Government in such preceding year.

(B) An amount which bears, to one-sixth of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced in the immediately preceding fiscal year from the outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in such year from all of the outer Continental Shelf acreage which is leased by the Federal Government.

(C) An amount which bears, to one-sixth of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced from outer Continental Shelf acreage leased by the Federal Government which is first landed in such state in the immediately preceding fiscal year bears to the total volume of oil and natural gas produced from all outer Continental Shelf acreage leased by the Federal Government which is first landed in all of the coastal states in such year.

(D) An amount which bears, to one-third of the amount appropriated for such purpose for such fiscal year, the same ratio that the number of individuals residing in such state in the immediately preceding fiscal year who obtain new employment in such year as a result of new or expanded outer Continental Shelf energy activities bears to the total number of individuals residing in all of the coastal states in such year who obtain new employment in such year as a result of such outer Continental Shelf energy activities.

(3)(A) The Secretary shall determine annually the amounts of the grants to be provided under this subsection and shall collect and evaluate such information as may be necessary to make such determinations. Each Federal department, agency, and instrumentality shall provide to the Secretary such assistance in collecting and evaluating relevant information as the Secretary may request. The Secretary shall request the assistance of any appropriate state agency in collecting and evaluating such information.

(B) For purposes of making calculations under paragraph (2), outer Continental Shelf acreage is adjacent to a particular coastal state if such acreage lies on that state's side of the extended lateral seaward boundaries of such state. The extended lateral seaward boundaries of a coastal state shall be determined as follows:

(i) If lateral seaward boundaries have been clearly defined or fixed by an interstate compact, agreement, or judicial decision (if entered into, agreed to, or issued before the date of the enactment of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to so define or fix them in such compact, agreement, or decision.

(ii) If no lateral seaward boundaries, or any portion thereof, have been clearly defined or fixed by an interstate compact, agreement, or judicial decision, lateral seaward boundaries shall be determined according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and the Contiguous Zone, and extended on the basis of such principles.

(iii) If, after the date of enactment of this paragraph, two or more coastal states enter into or amend an interstate compact or agreement in order to clearly define or fix lateral seaward boundaries, such boundaries shall thereafter be extended on the basis of the principles of delimitation used to so define or fix them in such compact or agreement.

(C) For purposes of making calculations under this subsection, the transitional quarter beginning July 1, 1976, and ending September 30, 1976, shall be included within the fiscal year ending June 30, 1976.

(4) Each coastal state shall use the proceeds of grants received by it under this subsection for the following purposes (except that priority shall be given to the use of such proceeds for the purpose set forth in subparagraph (A)):

(A) The retirement of state and local bonds, if any, which are guaranteed under subsection (d)(2); except that, if the amount of such grants is insufficient to retire both state and local bonds, priority shall be given to retiring local bonds.

(B) The study of, planning for, development of, and the carrying out of projects and programs in such state which are—

(i) necessary, because of the unavailability of adequate financing under any other subsection, to provide new or improved public facilities and public services which are required as a direct result of new or expanded outer Continental Shelf energy activity; and

(ii) of a type approved by the Secretary as eligible for grants under this paragraph, except that the Secretary may not disapprove any project or program for highways and secondary roads, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care.

(C) The prevention, reduction, or amelioration of any unavoidable loss in such state's coastal zone of any valuable environmental or recreational resource if such loss results from coastal energy activity.

(5) The Secretary, in a timely manner, shall

determine that each coastal state has expended or committed, and may determine that such state will expend or commit, grants which such state has received under this subsection in accordance with the purposes set forth in paragraph (4). The United States shall be entitled to recover from any coastal state an amount equal to any portion of any such grant received by such state under this subsection which—

(A) is not expended or committed by such state before the close of the fiscal year immediately following the fiscal year in which the grant was disbursed, or

(B) is expended or committed by such state for any purpose other than a purpose set forth in paragraph (4).

Before disbursing the proceeds of any grant under this subsection to any coastal state, the Secretary shall require such state to provide adequate assurances of being able to return to the United States any amounts to which the preceding sentence may apply.

(c) The Secretary shall make grants to any coastal state if the Secretary finds that the coastal zone of such state is being, or is likely to be, significantly affected by the siting, construction, expansion, or operation of new or expanded energy facilities. Such grants shall be used for the study of, and planning for (including, but not limited to, the application of the planning process included in a management program pursuant to section 1454 (b)(8)) any economic, social, or environmental consequence which has occurred, is occurring, or is likely to occur in such state's coastal zone as a result of the siting, construction, expansion, or operation of such new or expanded energy facilities. The amount of any such grant shall not exceed 80 per centum of the cost of such study and planning.

(d)(1) The Secretary shall make loans to any coastal state and to any unit of general purpose local government to assist such state or unit to provide new or improved public facilities or public services, or both, which are required as a result of coastal energy activity. Such loans shall be made solely pursuant to this title, and no such loan shall require as a condition thereof that any such state or unit pledge its full faith and credit to the repayment thereof. No loans shall be made under this paragraph after September 30, 1986.

(2) The Secretary shall, subject to the provisions of subsection (f), guarantee, or enter into commitments to guarantee, the payment of interest on, and the principal amount of, any bond or other evidence of indebtedness if it is issued by a coastal state or a unit of general purpose local government for the purpose of providing new or improved public facilities or public services, or both, which are required as a result of a coastal energy activity.

(3) If the Secretary finds that any coastal state or unit of general purpose local government is unable to meet its obligations pursuant to a loan or guarantee made under paragraph (1) or (2) because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such state or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such state or unit pursuant to subsection (e)(3), take any of the following actions:

(A) Modify appropriately the terms and conditions of such loan or guarantee.

(B) Refinance such loan.

(C) Make a supplemental loan to such state or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan or guarantee.

(D) Make a grant to such state or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan or guarantee.

Notwithstanding the preceding sentence, if the Secretary—

(i) has taken action under subparagraph (A), (B), or (C) with respect to any loan or guarantee made under paragraph (1) or (2), and

(ii) finds that additional action under subparagraph (A), (B), or (C) will not enable such state or unit to meet, within a reasonable time, its obligations under such loan or guarantee and any additional obligations related to such loan or guarantee;

the Secretary shall make a grant or grants under subparagraph (D) to such state or unit in an amount sufficient to enable such state or unit to meet such outstanding obligations.

(4) The Secretary shall make grants to any coastal state to enable such state to prevent, reduce, or ameliorate any unavoidable loss in such state's coastal zone of any valuable environmental or recreational resource, if such loss results from coastal energy activity, if the Secretary finds that such state has not received amounts under subsection (b) which are sufficient to prevent, reduce, or ameliorate such loss.

(e) Rules and regulations with respect to the following matters shall be promulgated by the Secretary as soon as practicable, but not later than 270 days after the date of the enactment of this section:

(1) A formula and procedures for apportioning equitably, among the coastal states, the amounts which are available for the provision of financial assistance under subsection (d). Such formula shall be based on, and limited to, the following factors:

(A) The number of additional individuals who are expected to become employed in new or expanded coastal energy activity, and the related new population, who reside in the respective coastal states.

(B) The standardized unit costs (as determined by the Secretary by rule), in the relevant regions of such states, for new or improved public facilities and public services which are required as a result of such expected employment and the related new population.

(2) Criteria under which the Secretary shall review each coastal state's compliance with the requirements of subsection (g)(2).

(3) Criteria and procedures for evaluating the extent to which any loan or guarantee under subsection (d) (1) or (2) which is applied for by any coastal state or unit of general purpose local government can be repaid through its ordinary methods and rates for generating tax revenues. Such procedures shall require such state or unit to submit to the Secretary such information which is specified by the Secretary to be necessary for such evaluation, including, but not limited to—

(A) a statement as to the number of additional individuals who are expected to become employed in the new or expanded coastal energy activity involved, and the related new population, who reside in such state or unit;

(B) a description, and the estimated costs, of the new or improved public facilities or public services needed or likely to be needed as a result of such expected employment and related new population;

(C) a projection of such state's or unit's estimated tax receipts during such reasonable time thereafter, not to exceed 30 years, which will be available for the repayment of such loan or guarantee; and

(D) a proposed repayment schedule.

The procedures required by this paragraph shall also provide for the periodic verification, review, and modification (if necessary) by the Secretary of the information or other material required to be submitted pursuant to this paragraph.

(4) Requirements, terms, and conditions (which may include the posting of security) which shall be imposed by the Secretary, in connection with loans and guarantees made under subsections (d) (1) and (2), in order to assure repayment within the time fixed, to assure that the proceeds thereof may not be used to provide public services for an unreasonable length of time, and otherwise to protect the financial interests of the United States.

(5) Criteria under which the Secretary shall establish rates of interest on loans made under subsections (d) (1) and (3). Such rates shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loans.

In developing rules and regulations under this subsection, the Secretary shall, to the extent practicable, request the views of, or consult with, appropriate persons regarding impacts resulting from coastal energy activity.

(f)(1) Bonds or other evidences of indebtedness guaranteed under subsection (d)(2) shall be guaranteed on such terms and conditions as the Secretary shall prescribe, except that—

(A) no guarantee shall be made unless the indebtedness involved will be completely amortized within a reasonable period, not to exceed 30 years;

(B) no guarantee shall be made unless the Secretary determines that such bonds or other evidences of indebtedness will—

(i) be issued only to investors who meet the requirements prescribed by the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(ii) bear interest at a rate found not to be excessive by the Secretary; and

(iii) contain, or be subject to, repayment, maturity, and other provisions which are satisfactory to the Secretary;

(C) the approval of the Secretary of the Treasury shall be required with respect to any such guarantee, unless the Secretary of the Treasury waives such approval; and

(D) no guarantee shall be made after September 30, 1986.

(2) The full faith and credit of the United States is pledged to the payment, under paragraph (5), of any default on any indebtedness guaranteed under subsection (d)(2). Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation, except for fraud or material misrepresentation on the part of the holder, or known to the holder at the time acquired.

(3) The Secretary shall prescribe and collect fees in connection with guarantees made under subsection (d)(2). These fees may not exceed the amount which the Secretary estimates to be necessary to cover the administrative costs pertaining to such guarantees.

(4) The interest paid on any obligation which is guaranteed under subsection (d)(2) and which is received by the purchaser thereof (or the purchaser's successor in interest), shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954. The Secretary may pay out of the Fund to the coastal state or the unit of general purpose local government issuing such obligations not more than such portion of the interest on such obligations as exceeds the amount of interest that would be due at a comparable rate determined for loans made under subsection (d)(1).

(5)(A) Payments required to be made as a result of any guarantee made under subsection (d)(2) shall be made by the Secretary from sums appropriated to the Fund or from moneys obtained from the Secretary of the Treasury pursuant to paragraph (6).

(B) If there is a default by a coastal state or unit of general purpose local government in any payment of principal or interest due under a bond or other evidence of indebtedness guaranteed by the Secretary under subsection (d)(2), any holder of such bond or other evidence of indebtedness may demand payment by the Secretary of the unpaid interest on and the unpaid principal of such obligation as they become due. The Secretary, after investigating the facts presented by the holder,

shall pay to the holder the amount which is due such holder, unless the Secretary finds that there was no default by such state or unit or that such default has been remedied.

(C) If the Secretary makes a payment to a holder under subparagraph (B), the Secretary shall—

(i) have all the rights granted to the Secretary or the United States by law or by agreement with the obligor; and

(ii) be subrogated to all of the rights which were granted such holder, by law, assignment, or security agreement between such holder and the obligor.

Such rights shall include, but not be limited to, a right of reimbursement to the United States against the coastal state or unit of general purpose local government for which the payment was made for the amount of such payment plus interest at the prevailing current rate as determined by the Secretary. If such coastal state, or the coastal state in which such unit is located, is due to receive any amount under subsection (b), the Secretary shall, in lieu of paying such amounts to such state, deposit such amount in the Fund until such right of reimbursement has been satisfied. The Secretary may accept, in complete or partial satisfaction of any such rights, a conveyance of property or interests therein. Any property so obtained by the Secretary may be completed, maintained, operated, held, rented, sold, or otherwise dealt with or disposed of on such terms or conditions as the Secretary prescribes or approves. If, in any case, the sum received through the sale of such property is greater than the amount paid to the holder under subparagraph (D) plus costs, the Secretary shall pay any such excess to the obligor.

(D) The Attorney General shall, upon the request of the Secretary, take such action as may be appropriate to enforce any right accruing to the Secretary or the United States as a result of the making of any guarantee under subsection (d)(2). Any sums received through any sale under subparagraph (C) or recovered pursuant to this subparagraph shall be paid into the Fund.

(6) If the moneys available to the Secretary are not sufficient to pay any amount which the Secretary is obligated to pay under paragraph (5), the Secretary shall issue to the Secertary of the Treasury notes or other obligations (only to such extent and in such amounts as may be provided for in appropriation Acts) in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury prescribes. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such notes or other obligations. Any sums received by the Secretary through such issuance shall be deposited in the Fund. The Secretary of the Treasury shall purchase any notes or other obligations issued under this paragraph, and for this purpose such Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under that Act are extended to include any purchase of notes or other obligations issued under this paragaph. The Secretary of the Treasury may at any time sell any of the notes or other obligations so acquired under this paragraph. All redemptions, purchases, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

(g)(1) No coastal state is eligible to receive any financial assistance under this section unless such state—

(A) has a management program which has been approved under section 1455;

(B) is receiving a grant under section 1454(c) or (d); or

(C) is, in the judgment of the Secretary, making satisfactory progress toward the development of a management program which is consistent with the policies set forth in section 1452.

(2) Each coastal state shall, to the maximum extent practicable, provide that financial assistance provided under this section be apportioned, allocated, and granted to units of local government within such state on a basis which is proportional to the extent to which such units need such assistance.

(h) There is established in the Treasury of the United States the Coastal Energy Impact Fund. The Fund shall be available to the Secretary without fiscal year limitation as a revolving fund for the purposes of carrying out subsections (c) and (d). The Fund shall consist of—

(1) any sums appropriated to the Fund;

(2) payments of principal and interest received under any loan made under subsection (d)(1);

(3) any fees received in connection with any guarantee made under subsection (d)(2); and

(4) any recoveries and receipts under security, subrogation, and other rights and authorities described in subsection (f).

All payments made by the Secretary to carry out the provisions of subsections (c), (d), and (f) (including reimbursements to other Government accounts) shall be paid from the Fund, only to the extent provided for in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of subsections (c), (d), and (f) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(i) The Secretary shall not intercede in any land use or water use decision of any coastal state with respect to the siting of any energy facility or public facility by making siting in a particular location a prerequisite to, or a condition of, financial assistance under this section.

(j) The Secretary may evaluate, and report to the Congress, on the efforts of the coastal states and units of local government therein to reduce or ameliorate adverse consequences resulting from coastal energy activity and on the extent to which such efforts involve adequate consideration of alternative sites.

(k) To the extent that Federal funds are available under, or pursuant to, any other law with respect to—

(1) study and planning for which financial assistance may be provided under subsection (b) (4) (B) and (c), or

(2) public facilities and public services for which financial assistance may be provided under subsection (b) (4) (B) and (d),

the Secretary shall, to the extent practicable, administer such subsections—

(A) on the basis that the financial assistance shall be in addition to, and not in lieu of, any Federal funds which any coastal state or unit of general purpose local government may obtain under any other law; and

(B) to avoid duplication.

(l) As used in this section—

(1) The term "retirement", when used with respect to bonds, means the redemption in full and the withdrawal from circulation of those which cannot be repaid by the issuing jurisdiction in accordance with the appropriate repayment schedule.

(2) The term "unavoidable", when used with respect to a loss of any valuable environmental or recreational resource, means a loss, in whole or in part—

(A) the costs of prevention, reduction, or amelioration of which cannot be directly or indirectly attributed to, or assessed against, any identifiable person; and

(B) cannot be paid for with funds which are available under, or pursuant to, any provision of Federal law other than this section.

(3) The term "unit of general purpose local government" means any political subdivision of any coastal State or any special entity created by such a state or subdivision which (in whole or part) is located in, or has authority over, such state's coastal zone, and which (A) has authority to levy taxes or establish and collect user fees, and (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. (Added Pub. L. 94–370, § 7, July 26, 1976, 90 Stat. 1019.)

§ 1456b. INTERSTATE GRANTS

(a) The coastal states are encouraged to give high priority—

(1) to coordinating state coastal zone planning, policies, and programs with respect to contiguous areas of such states; and

(2) to studying, planning, and implementing unified coastal zone policies with respect to such areas.

Such coordination, study, planning, and implementation may be conducted pursuant to interstate agreements or compacts. The Secretary may make grants annually, in amounts not to exceed 90 per centum of the cost of such coordination, study, planning, or implementation, if the Secretary finds that the proceeds of such grants will be used for purposes consistent with sections 1454 and 1455.

(b) The consent of the Congress is hereby given to two or more coastal states to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for—

(1) developing and administering coordinated coastal zone planning, policies, and programs pursuant to sections 1454 and 1455; and

(2) establishing executive instrumentalities or agencies which such states deem desirable for the effective implementation of such agreements or compacts.

Such agreements or compacts shall be binding and obligatory upon any state or party thereto without further approval by the Congress.

(c) Each executive instrumentality or agency which is established by an interstate agreement or compact pursuant to this section is encouraged to adopt, a Federal-State consultation procedure for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone. The Secretary, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, and the Administrator of the Federal Energy Administration, or their designated representatives, shall participate ex officio on behalf of the Federal Government whenever any such Federal State consultation is requested by such an instrumentality or agency.

(d) If no applicable interstate agreement or compact exists, the Secretary may coordinate coastal zone activities described in subsection (a) and may make grants to assist any group of two or more coastal states to create and maintain a temporary planning and coordinating entity to—

(1) coordinate state coastal zone planninng, policies, and programs with respect to contiguous areas of the states involved;

(2) study, plan, and implement unified coastal zone policies with respect to such areas; and

(3) establish an effective mechanism, and adopt a Federal-State consultation procedure, for the identification, examination, and cooperative resclution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

The amount of such grants shall not exceed 90 per centum of the cost of creating and maintaining such an entity. The Federal officials specified in subsection (c), or their designated representatives, shall participate on behalf of the Federal Government, upon the request of any such temporary planning and coordinating entity. (Added Pub. L. 94–370, § 8, July 26, 1976, 90 Stat. 1028.)

§ 1456c. Research and technical assistance for coastal zone management.

(a) The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. Each department, agency, and instrumentality of the executive branch of the Federal Gov-

ernment may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including, but not limited to, the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and training which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b) The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management. The amount of any grant made under this subsection shall not exceed 80 per centum of the cost of such research, studies, and training.

(c)(1) The Secretary shall provide for the coordination of research, studies, and training activities under this section with any other such activities that are conduced by, or subject to the authority of, the Secretary.

(2) The Secretary shall make the results of research conducted pursuant to this section available to any interested person. (Added Pub. L. 94–370, § 9, July 26, 1976, 90 Stat. 1029.)

§ 1457. Public hearings.

All public hearings required under this chapter must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency. (Pub. L. 89–454, title III, § 308, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1287.)

§ 1458. Review of performance; termination of financial assistance.

(a) The Secretary shall conduct a continuing review of—

(1) the management programs of the coastal states and the performance of such states with respect to coastal zone management; and

(2) the coastal energy impact program provided for under section 1456a.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 1455 of this title and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program. (Pub. L. 89–454, title III, § 309, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1287, and amended Pub. L. 94–370, § 10, July 26, 1976, 90 Stat. 1029.)

§ 1459. Records and audit.

(a) Each recipient of a grant under this chapter or of financial assistance under section 1456a shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant and of the proceeds of such assistance the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall—

(1) after any grant is made under this title or any financial assistance is provided under section 1456a(d); and

(2) until the expiration of 3 years after—

(A) completion of the project, program, or other undertaking for which such grant was made or used, or

(B) repayment of the loan or guaranteed indebtedness for which such financial assistance was provided,

have access for purposes of audit and examination to any record, book, document, and paper which belongs to or is used or controlled by, any recipient of the grant funds or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if the grant funds or the proceeds of such financial assistance are being, or were, used in accordance with the provisions of this title. (Pub. L. 89–454, title III, § 312, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1288 and amended Pub. L. 94–370, § 12, July 26, 1976, 90 Stat. 1030.)

§ 1460. Coastal Zone Management Advisory Committee.

(a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding $100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for individuals in the Government service employed intermittently. (Pub. L. 89–454, title III, § 311, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1287.)

§ 1461. Estuarine sanctuaries and beach access.

The Secretary may, in accordance with this section and in accordance with such rules and regulations as the Secretary shall promulgate, make grants to any coastal state for the purpose of—

(1) acquiring, developing, or operating estuarine sanctuaries, to serve as natural field laboratories in which to study and gather data on the natural and human processes occurring within the estuaries of the coastal zone; and

(2) acquiring lands to provide for access to public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value, and for the preservation of islands.

The amount of any such grant shall not exceed 50 per centum of the cost of the project involved; except that, in the case of acquisition of any estuarine sanctuary, the Federal share of the cost thereof shall not exceed $2,000,000. (Pub. L. 89–454, title III, § 312, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1288 and amended Pub. L. 94–370, § 12, July 26, 1976, 90 Stat. 1030.)

§ 1462. Annual report.

(a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this chapter for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this chapter during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this chapter and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this chapter, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 1456 of this title, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this chapter in order of priority; (9) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 1456a in dealing with such consequences; (10) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (11) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (12) such other information as may be appropriate.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this chapter and enhance its effective operation. (Pub. L. 89–454, title III, § 313, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1288 and amended Pub. L. 94–370, § 13, July 26, 1976, 90 Stat. 1030.)

§ 1463. Rules and regulations.

The Secretary shall develop and promulgate, pursuant to section 553 of Title 5, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this chapter. (Pub. L. 89–454, title III, § 314, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1288.)

§ 1464. Authorization of appropriations.

(a) There are authorized to be appropriated to the Secretary—

(1) such sums, not to exceed $20,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979, respectively, as may be necessary for grants under section 1454, to remain available until expended;

(2) such sums, not to exceed $50,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 1455, to remain available until expended;

(3) such sums, not to exceed $50,000,000 for each of the 8 fiscal years occurring during the period beginning October 1, 1976, and ending September 30, 1984, as may be necessary for grants under section 1456a(b);

(4) such sums, not to exceed $5,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 1456b, to remain available until expended;

(5) such sums, not to exceed $10,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for financial assistance under section 1456c, of which 50 per centum shall be for financial assistance under section 1456c(a) and 50 per centum shall be for financial assistance under section 1456c(b), to remain available until expended;

(6) such sums, not to exceed $6,000,000 for each of the fiscal years ending September 30,

1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 1461(1), to remain available until expended;

(7) such sums, not to exceed $25,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, Septemebr 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 1461(2), to remain available until expended; and

(8) such sums, not to exceed $5,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for administrative expenses incident to the administration of this title.

(b) There are authorized to be appropriated until October 1, 1986, to the Fund, such sums, not to exceed $800,000,000, for the purposes of carrying out the provisions of section 1456a, other than subsection (b), of which not to exceed $50,000,000 shall be for purposes of subsections (c) and (d)(4) of such section.

(c) Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 1454, 1455, 1456b, or 1456c. (Pub. L. 89–454, title III, § 315, as added Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1289, and amended Pub. L. 93–612, § 1(3), Jan. 2, 1975, 88 Stat. 1974; Pub. L. 94–370, § 14, July 26, 1976, 90 Stat. 1031.)

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 93–612, § 1(3)(A), increased from $9,000,000 to $12,000,000 the sums authorized to be appropriated for the 3 fiscal years following the fiscal year 1974.

Subsec. (a)(3). Pub. L. 93–612, § 1(3)(B), added "and for each of the three succeeding fiscal years," following "fiscal year ending June 30, 1974,".

5. Control of Jellyfish

16 U.S.C. 1201–1205

(See Control of Jellyfish under title XI *Water Pollution*)

6. Control of Obnoxious Plants in Navigable Waters

33 U.S.C. 610

(See Control of Obnoxious Plants in Navigable Waters under title XI *Water Pollution*)

7. Control of Star Fish

16 U.S.C. 1211–1213

(See Control of Star Fish under title XI *Water Pollution*)

8. Deepwater Port Act

33 U.S.C. 1501–1524

Sec.

§ 1501. Congressional declaration of policy.

(a) It is declared to be the purposes of the Congress in this chapter to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this chapter shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf. (Pub. L. 93–627, § 2, Jan. 3, 1975, 88 Stat. 2126.)

§ 1502. Definitions.

As used in this chapter, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 1508(a)(2) of this title;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 1504(c)(2)(A) or (B) of this title;

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act, and sections 73 and 74 of the Act of August 27, 1894, as amended;

(4) "application" means any application submitted under this chapter (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and there-

under) (and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 1522 of this title. The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a "new source" for purposes of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

(11) "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this chapter;

(12) "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this chapter;

(13) "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(14) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15) "person" includes an individual, a public or private corportaion, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 1509(d) of this title;

(17) "Secretary" means the Secretary of Transportation;

(18) "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(19) "vessel" means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

(Pub. L. 93-627, § 3, Jan. 3, 1975, 88 Stat. 2127.)

§ 1503. License for ownership, construction, and operation of deepwater port.

(a) Requirement; restrictions on utilization of deepwater port.

No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this chapter. No person may transport or otherwise transfer any oil between a deepwater port and the United States unless such port has been so licensed and the license is in force. A deepwater port, licensed pursuant to the provisions of this chapter, may not be utilized—

(1) for the loading and unloading of commodities or materials (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering for vessels utilizing the high seas oil port,

(2) for the transshipment of commodities or materials, to the United States, other than oil,

(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States.

(b) Issuance, transfer, amendment, or renewal.

The Secretary is authorized, upon application and in accordance with the provisions of this chapter, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.

(c) Conditions for issuance.

The Secretary may issue a license in accordance with the provisions of this chapter if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section 1517(*l*) of this title;

(2) he determines that the applicant can and will comply with applicable laws, regulations, and license conditions;

(3) he determines that the construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality;

(4) he determines that the deepwater port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law;

(5) he determines, in accordance with the environmental review criteria established pursuant to section 1505 of this title, that the applicant has demonstrated that the deepwater port will be constructed and operated using best available technology, so as to prevent or minimize adverse impact on the marine environment;

(6) he has not been informed, within 45 days of the last public hearing on a proposed license for a designated application area, by the Administrator of the Environmental Protection Agency that the deepwater port will not conform with all applicable provisions of the Clean Air Act, as amended. the Federal Water Pollution Control Act. as amended, or the Marine Protection, Research and Sanctuaries Act, as amended;

(7) he has received the opinions of the Federal Trade Commission and the Attorney General, pursuant to section 1506 of this title, as to whether issuance of the license would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws;

(8) he has consulted with the Secretary of the Army, the Secretary of State, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(9) the Governor of the adiacent coastal State of States, pusuant to section 1508 of this title, approves, or is presumed to approve, issuance of the license; and

(10) the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress, as determined in accordance with section 1508(c) of this title, toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972.

(d) Application for license subject to examination and comparison of economic, social, and environmental effects of deepwater port facility and deep draft channel and harbor; finality of determination.

If an application is made under this chapter for a license to construct a deepwater port facility off the coast of a State, and a port of the State which will be directly connected by pipeline with such deepwater port, on the date of such application—

(1) has existing plans for construction of a deep draft channel and harbor; and

(2) has either (A) an active study by the Secretary of the Army relating to the construction of a deep draft channel and harbor, or (B) a pending application for a permit under section 403 of this title for such construction; and

(3) applies to the Secretary for a determination under this section within 30 days of the date of the license application;

the Secretary shall not issue a license under this chapter until he has examined and compared the economic, social, and environmental effects of the construction and operation of the deepwater port with the economic, social and environmental effects of the construction, expansion, deepening, and operation of such State port, and has determined which project best serves the national interest or that both developments are warranted. The Secretary's determination shall be discretionary and nonreviewable.

(e) Additional conditions, removal requirements, waiver; Outer Continental Shelf Lands Act applicable to utilization of components upon waiver of removal requirements.

(1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter.

(2) No license shall be issued, transferred, or renewed under this chapter unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this chapter.

(3) The Secretary shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation or termination of a license, the licensee will remove all components of the deepwater port. In the case of components lying in the subsoil below the seabed, the Secretary is authorized to waive the removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to navigation or to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components which he determines may be utilized in connection with the transportation of oil, natural gas, or other minerals, pursuant to a lease granted under the provisions of the Outer Continental Shelf Lands Act, after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

(f) Transfer.

Upon application, licenses issued under this chapter may be transferred if the Secretary determines that such transfer is in the public interest and that the transferee meets the requirements of this chapter and the prerequisites to issuance under subsection (c) of this section.

(g) Eligible citizens.

Any citizen of the United States who otherwise qualifies under the terms of this chapter shall be eligible to be issued a license for the ownership, construction, and operation of a deepwater port.

(h) Term and renewal.

Licenses issued under this chapter shall be for a term of not to exceed 20 years. Each licensee shall

have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Secretary determines to be reasonable and appropriate. (Pub. L. 93–627, § 4, Jan. 3, 1975, 88 Stat 2128.)

§ 1504. Procedure.

(a) Regulations; issuance, amendment, or rescission; scope.

The Secretary shall, as soon as practicable after January 3, 1975, and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of this chapter in accordance with the provisions of section 553 of title 5, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application, issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Secretary is further authorized, consistent with the purposes and provisions of this chapter, to amend or rescind any such regulation.

(b) Additional regulations; criteria for site evaluation and preconstruction testing.

The Secretary, in consultation with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, shall, as soon as practicable after January 3, 1975, prescribe regulations relating to those activities involved in site evaluation and preconstruction testing at potential deepwater port locations that may (1) adversely affect the environment; (2) interfere with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and welfare. Such activity may thenceforth not be undertaken except in accordance with regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this chapter.

(c) Plans; submittal to Secretary of Transportation; publication in Federal Register; application contents.

(1) Any person making an application under this chapter shall submit detailed plans to the Secretary. Within 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. If the Secretary determines that such information appears to be contained in the application, the Secretary shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Secretary determines that all of the required information does not appear to be contained in the application, the Secretary shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to—

(A) the name, address, citizenship, telephone number, and the ownership interest in the applicant, of each person having any ownership interest in the applicant of greater than 3 per centum;

(B) to the extent feasible, the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the construction or operation of the deepwater port, and a copy of any such contract;

(C) the name, address, citizenship, and telephone number of each affiliate of the applicant and of any person required to be disclosed pursuant to subparagraphs (A) or (B) of this paragraph, together with a description of the manner in which such affiliate is associated with the applicant or any person required to be disclosed under subparagraph (A) or (B) of this paragraph;

(D) the proposed location and capacity of the deepwater port, including all components thereof;

(E) the type and design of all components of the deepwater port and any storage facilities associated with the deepwater port;

(F) with respect to construction in phases, a detailed description of each phase, including anticipated dates of completion for each of the speific components thereof;

(G) the location and capacity of existing and proposed storage facilities and pipelines which will store or transport oil transported through the deepwater port, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(H) with respect to any existing and proposed refineries which will receive oil transported through the deepwater port, the location and capacity of each such refinery and the anticipated volume of such oil to be refined by each such refinery, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(I) the financial and technical capabilities of the applicant to construct or operate the deepwater port;

(J) other qualifications of the applicant to hold a license under this chapter;

(K) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment and cleanup; and

(L) such other information as may be required by the Secretary to determine the environmental impact of the proposed deepwater port.

(d) Application area; publication in Federal Register; definition of "application area"; submission of other applications; notice of intent and submission of completed applications; denial of pending application prior to consideration of other untimely applications.

(1) At the time notice of an application is published pursuant to subsection (c) of this section, the Secretary shall publish a description in the Federal Register of an application area encompassing the deepwater port site proposed by such application and within which construction of the proposed deepwater port would eliminate, at the time such application was submitted, the need for any other deepwater port within that application area.

(2) As used in this section, "application area" means any reasonable geographical area within which a deepwater port may be constructed and operated. Such application area shall not exceed a circular zone, the center of which is the principal point of loading and unloading at the port, and the radius of which is the distance from such point to the high water mark of the nearest adjacent coastal State.

(3) The Secretary shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of a deepwater port within the designated application area. Persons intending to file applications for such license shall submit a notice of intent to file an application with the Secretary not later than 60 days after the publication of notice pursuant to subsection (c) of this section and shall submit the completed application no later than 90 days after publication of such notice. The Secretary shall publish notice of any such application received in accordance with subsection (c) of this section. No application for a license for the ownership, construction, and operation of a deepwater port within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until the application pending with respect to such application area have been denied pursuant to this chapter.

(e) Recommendations to Secretary of Transportation; application for all Federal authorizations; copies of application to Federal agencies and departments with jurisdiction; recommendation of approval or disapproval and of manner of amendment to comply with laws or regulations.

(1) Not later than 30 days after January 3, 1975, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and the heads of any other Federal department or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports shall transmit to the Secretary written comments as to their expertise or statutory responsibilities pursuant to this chapter or any other Federal law.

(2) An application filed with the Secretary shall constitute an application for all Federal authorizations required for ownership, construction, and operation of a deepwater port. At the time notice of any application is published pursuant to subsection (c) of this section, the Secretary shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Secretary, the approval or disapproval of the application not later than 45 days after the last public hearing on a proposed license for a designated application area. In any case in which the agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulation involved.

(f) Environmental impact statement for single application area; criteria.

For all timely applications covering a single application area, the Secretary, in cooperation with other involved Federal agencies and departments, shall, pursuant to section 4332(2)(C) of Title 42, prepare a single detailed environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this chapter to prepare an environmental impact statement. In preparing such statement the Secretary shall consider the criteria established under section 1505 of this title.

(g) Public notice and hearings; evidentiary hearing in District of Columbia; decision of Secretary based on evidentiary record; consolidation of hearings.

A license may be issued, transferred, or renewed only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of Title 5 in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to subsection (c) of this section.

(h) Nonrefundable application fee; processing costs; State fees; "land-based facilities directly related to a deepwater port facility" defined; fair market rental value, advance payment.

(1) Each person applying for a license pursuant to this chapter shall remit to the Secretary at the time the application is filed a nonrefundable application fee established by regulation by the Secretary. In addition, an applicant shall also reimburse the United States and the appropriate adjacent coastal State for any additional costs incurred in processing an application.

(2) Notwithstanding any other provision of this chapter an adjacent coastal State may fix reasonable fees for the use of a deepwater port facility, and such State and any other State in which land-based facilities directly related to a deepwater port facility are located may set reasonable fees for the use of such land-based facilities. Fees may be fixed under authority of this paragraph as compensation for any economic cost attributable to the construction and operation of such deepwater port and such land-based facilities, which cannot be recovered under other authority of such State or political subdivision thereof, including, but not limited to, ad valorem taxes, and for environmental and administrative costs attributable to the construction and operation of such deepwater port and such land-based facilities. Fees under this paragraph shall not exceed such economic, environmental, and administrative costs of such State. Such fees shall be subject to the approval of the Secretary. As used in this paragraph, the term "land-based facilities directly related to a deepwater port facility" means the onshore tank farm and pipelines connecting such tank farm to the deepwater port facility.

(3) A licensee shall pay annually in advance the fair market rental value (as determined by the Secretary of the Interior) of the subsoil and seabed of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed.

(i) Application approval; period for determination; priorities; criteria for determination of application best serving national interest.

(1) The Secretary shall approve or deny any application for a designated application area submitted pursuant to this chapter not later than 90 days after the last public hearing on a proposed license for that area.

(2) In the event more than one application is submitted for an application area, the Secretary, unless one of the proposed deepwater ports clearly best serves the national interest, shall issue a license according to the following order of priorities:

(A) to an adjacent coastal State (or combination of States), any political subdivision thereof, or agency or instrumentality, including a wholly owned corporation of any such government;

(B) to a person who is neither (i) engaged in producing, refining, or marketing oil, nor (ii) an affiliate of any person who is engaged in producing, refining, or marketing oil or an affiliate of any such affiliate;

(C) to any other person.

(3) In determining whether any one proposed deepwater port clearly best serves the national interest, the Secretary shall consider the following factors:

(A) the degree to which the proposed deepwater ports affect the environment, as determined under criteria established pursuant to section 1505 of this title;

(B) any significant differences between anticipated completion dates for the proposed deepwater ports; and

(C) any differences in costs of construction and operation of the proposed deepwater ports, to the extent that such differential may significantly affect the ultimate cost of oil to the consumer.

(Pub. L. 93–627, § 5, Jan. 3, 1975, 88 Stat. 2131.)

§ 1505. Environmental review criteria.

(a) Establishment; evaluation of proposed deepwater ports.

The Secretary, in accordance with the recommendations of the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration and after consultation with any other Federal departments and agencies having jurisdiction over any aspect of the construction or operation of a deepwater port, shall establish, as soon as practicable after January 3, 1975, environmental review criteria consistent with the National Environmental Policy Act. Such criteria shall be used to evaluate a deepwater port as proposed in an application, including—

(1) the effect on the marine environment;

(2) the effect on oceanographic currents and wave patterns;

(3) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and exploitation of other living and nonliving resources;

(4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;

(5) effects of land-based developments related to deepwater port development;

(6) the effect on human health and welfare; and

(7) such other considerations as the Secretary deems necessary or appropriate.

(b) Review and revision.

The Secretary shall periodically review and, whenever necessary, revise in the same manner as originally developed, criteria established pursuant to subsection (a) of this section.

(c) Concurrent development of criteria and regulations.

Criteria established pursuant to this section shall be developed concurrently with the regulations in subsection (a) of section 1504 of this title and in accordance with the provisions of that subsection.

(Pub. L. 93–627, § 6, Jan. 3, 1975, 88 Stat. 2135.)

§ 1506. Antitrust review.

(a) Opinions of Attorney General and Federal Trade Commission; defense to judicial proceedings, license inadmissible.

The Secretary shall not issue, transfer, or renew any license pursuant to section 1503 of this title unless he has received the opinions of the Attorney General of the United States and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. The issuance of a license under this chapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(b) Applications; submittal to Attorney General and Federal Trade Commission for preparation of reports to Secretary of Transportation; antitrust laws unaffected.

(1) Whenever any application for issuance, transfer, substantial change in, or renewal of any license is received, the Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application. Within 45 days following the last public hearing, the Attorney General and the Federal Trade Commission shall each prepare and submit to the Secretary a report assessing the competitive effects which may result from issuance of the proposed license and the opinions described in subsection (a) of this section. If either the Attorney General or the Federal Trade Commission, or both, fails to file such views within such period, the Secretary shall proceed as if he had received such views.

(2) Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of a deepwater port.

(3) Nothing contained in this section shall impair, amend, broaden or modify any of the antitrust laws. (Pub. L. 93–627, § 7, Jan. 3, 1975, 88 Stat. 2135.)

§ 1507. Common carrier status; discrimination prohibition; enforcement, suspension, or termination proceedings.

(a) For the purpose of chapter 39 of Title 18 (sections 831–837 of Title 18), and part I of the Interstate Commerce Act (sections 1–27 of Title 49), a deepwater port and storage facilities serviced directly by such deepwater port shall be subject to regulation as a common carrier in accordance with the Interstate Commerce Act, as amended

(b) A licensee under this chapter shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. Whenever the Secretary has reason to believe that a licensee is not operating a deepwater port, any storage facility or component thereof, in compliance with its obligations as a common carrier, the Secretary shall commence an appropriate proceeding before the Interstate Commerce Commission or he shall request the Attorney General to take appropriate steps to enforce such obligation and, where appropriate, to secure the imposition of appropriate sanctions. The Secretary may, in addition, proceed as provided in section 1511 of this title to suspend or terminate the license of any person so involved. (Pub. L. 93–627, § 8, Jan. 3, 1975, 88 Stat. 2136.)

§ 1508. Adjacent coastal States.

(a) Designation; direct pipeline connections; mileage; risk of damage to coastal environment, time for designation.

(1) The Secretary, in issuing notice of application pursuant to section 1504(c) of this title, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.

(2) The Secretary shall, upon request of a State, and after having received the recommendations of the Administrator of the National Oceanic and Atmospheric Administration, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of an application for a proposed deepwater port in the Federal Register in accordance with section 1504(c) of this title. The Secretary shall make the designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) Applications; submittal to Governors for approval or disapproval; consistency of Federal licenses and State programs; views of other interested States.

(1) Not later than 10 days after the designation of adjacent coastal States pursuant to this chapter, the Secretary shall transmit a complete copy of the application to the Governor of each adjacent coastal State. The Secretary shall not issue a license without the approval of the Governor of each adjacent coastal State. If the Governor fails to transmit his approval or disapproval to the Secretary not later than 45 days after the last public hearing on applications for a particular application area, such approval shall be conclusively presumed. If the Governor notifies the Secretary that an application, which would otherwise be approved pursuant to this paragraph, is inconsistent with State programs relating to environmental protection, land and water use, and coastal zone management, the Secretary shall condition the license granted so as to make it consistent with such State programs.

(2) Any other interested State shall have the opportunity to make its views known to, and shall be given full consideration by, the Secretary regarding the location, construction, and operation of a deepwater port.

(c) Reasonable progress toward development of coastal zone management program; planning grants.

The Secretary shall not issue a license unless the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress toward developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 in the area to be directly and primarily impacted by land and water development in the coastal zone resulting from such deepwater port. For the purposes of this chapter, a State shall be considered to be making reasonable progress if it is receiving a planning grant pursuant to section 305 of the Coastal Zone Management Act.

(d) State agreements or compacts.

The consent of Congress is given to two or more coastal States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of a deepwater port or for the transfer of such license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or party thereto without further approval by Congress. (Pub. L. 93–627, § 9, Jan. 3, 1975, 88 Stat. 2136.)

§ 1509. Marine environmental protection and navigational safety.

(a) Regulations and procedures.

Subject to recognized principles of international law, the Secretary shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to, rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) Safety of property and life; regulations.

The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) Marking of components; payment of cost.

The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with applicable regulations. The licensee shall pay the cost of such marking.

(d) Safety zones; designation; construction period; permitted activities.

(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense, the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 1504(c) of this title, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto. (Pub. L. 93–627, § 10, Jan. 3, 1975, 88 Stat. 2137.)

§ 1510. International agreements.

The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this chapter and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof. (Pub. L. 93–627, § 11, Jan. 3, 1975, 88 Stat. 2138.)

§ 1511. Suspension or termination of licenses.

(a) Proceedings by Attorney General; venue; conditions subsequent.

Whenever a licensee fails to comply with any applicable provision of this chapter, or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary under the authority of this chapter, the Attorney General, at the request of the Secretary, may, file an appropriate action in the United States district court nearest to the location of the proposed or actual deepwater port, as the case may be, or in the district in which the licensee resides or may be found, to—

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of thirty days after the Secretary mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this subsection is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) Public health or safety; danger to environment; completion of proceedings.

If the Secretary determines that immediate suspension of the construction or operation of a deepwater port or any component thereof is necessary to protect public health or safety or to eliminate im-

minent and substantial danger to the environment, he shall order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section. (Pub. L. 93–627, § 12, Jan. 3, 1975, 88 Stat. 2138.)

§ 1512. Recordkeeping and inspection.

(a) Regulations; regulations under other provisions unaffected.

Each licensee shall establish and maintain such records, make such reports, and provide such information as the Secretary, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provision of this chapter. Such regulations shall not amend, contradict or duplicate regulations established pursuant to part I of the Interstate Commerce Act or any other law. Each licensee shall submit such reports and shall make such records and information available as the Secretary may request.

(b) Access to deepwater ports in enforcement proceedings and execution of official duties; inspections and tests; notification of results.

All United States officials, including those officials responsible for the implementation and enforcement of United States laws applicable to a deepwater port, shall at all times be afforded reasonable access to a deepwater port licensed under this chapter for the purpose of enforcing laws under their jurisdiction or otherwise carrying out their responsibilities. Each such official may inspect, at reasonable times, records, files, papers, processes, controls, and facilities and may test any feature of a deep water port. Each inspection shall be conducted with reasonable promptness, and such licensee shall be notified of the results of such inspection. (Pub. L. 93–627, § 13, Jan. 3, 1975, 88 Stat. 2139.)

§ 1513. Public access to information.

(a) Inspection of copies; reproduction costs; protected information.

Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning a deepwater port (other than contracts referred to in section 1504(c)(2)(B) of this title) shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided in subsection (b) of this section, nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of Title 5 or which is otherwise protected by law from disclosure to the public.

(b) Information disclosure prohibition; confidentiality of certain disclosures.

The Secretary shall not disclose information obtained by him under this chapter that concerns or relates to a trade secret, referred to in section 1905 of Title 18, or to a contract referred to in section 1504(c)(2)(B) of this Title except that such information may be disclosed, in a manner which is designed to maintain confidentiality—

(1) to other Federal and adjacent coastal State government departments and agencies for official use, upon request;

(2) to any committee of Congress having jurisdiction over the subject matter to which the information relates, upon request;

(3) to any person in any judicial proceeding, under a court order formulated to preserve such confidentiality without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

(Pub. L. 93–627, § 14, Jan. 3, 1975, 88 Stat. 2139.)

§ 1514. Remedies.

(a) Criminal penalties.

Any person who willfully violates any provision of this chapter or any rule, order, or regulation issued pursuant thereto shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than 1 year, or both.

(b) Orders of compliance; Attorney General's civil action; jurisdiction and venue.

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any provision of this chapter or any rule, regulation, order, license, or condition thereof, or other requirements under this chapter, he shall issue an order requiring such person to comply with such provision or requirement, or he shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed $25,000 per day of such violation, for any violation for which the Secretary is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

(c) Attorney General's action for equitable relief; scope of relief.

Upon a request by the Secretary, the Attorney

General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of this chapter, any regulation under this chapter, or any license condition. The district courts of the United States shall have jurisdiction to grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, compensatory damages, and punitive damages.

(d) Vessels; liability in rem; exempt vessels; consent or privy of owners or bareboat charterers.

Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this chapter or of any rule or regulation issued pursuant to this chapter, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation. (Pub. L. 93–627, § 15, Jan. 3, 1975, 88 Stat. 2140.)

§ 1515. Citizen civil action.

(a) Equitable relief; case or controversy; district court jurisdiction.

Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this chapter or any condition of a license issued pursuant to this chapter; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this chapter which is not discretionary with the Secretary. Any action brought against the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this chapter, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this chapter or any condition of a license issued pursuant to this chapter, or to order the Secretary to perform such act or duty, as the case may be.

(b) Notice; intervention of right by person.

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary and (ii) to any alleged violator; or

(B) if the Secretary or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.

(c) Intervention of right by Secretary or Attorney General.

In any action under this section, the Secretary or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs of litigation; attorney and witness fees.

The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Statutory or common law rights unaffected.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement or to seek any other relief. (Pub. L. 93–627, § 16, Jan. 3, 1975, 88 Stat. 2140.)

§ 1516. Judicial review; persons aggrieved; jurisdiction of courts of appeal.

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend, or revoke a license may, not later than 60 days after any such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit within which the nearest adjacent coastal State is located. A person shall be deemed to be aggrieved by the Secretary's decision within the meaning of this chapter if he—

(A) has participated in the administrative proceedings before the Secretary (or if he did not so participate, he can show that his failure to do so was caused by the Secretary's failure to provide the required notice); and

(B) is adversely affected by the Secretary's action.

(Pub. L. 93–627, § 17, Jan. 3, 1975, 88 Stat. 2141.)

§ 1517. Liability.

(a) Oil discharge; prohibition; penalty; notice and hearing; separate offense; vessel clearance; withholding, bond or surety.

(1) The discharge of oil into the marine environment from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port is prohibited.

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than $10,000 for each violation. No penalty shall be assessed unless

the owner or operator or the licensee has been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary, the clearance required by section 91 of Title 46, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

(b) Oil discharge: notification; penalty; use of notification in criminal cases limited.

Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Oil removal; drawing upon Fund money for cleanup costs.

(1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 1321(e)(2) of this title.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the Deepwater Port Liability Fund established pursuant to subsection (f) of this section. Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

(d) Joint and several liability of owners and operators; limitation of liability; full amount of liability for gross negligence or willful misconduct.

Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

(e) Liability of licensees; limitation of liability; full amount of liability for gross negligence or willful misconduct.

Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

(f) Deepwater Port Liability Fund; establishment; suits; administration; liability for uncompensated cleanup costs and damages; fees and exemptions; maintenance of prescribed amount of money; loans from Treasury for payment of claims; interest; appropriation for administration costs; income from investments to principal of Fund.

(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

(g) Defenses; act of war; negligence of Federal Government; negligence of claimant.

Liability shall not be imposed under subsection

(d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

(h) Subrogation; third party liability; recovery of reasonable cleanup cost of discharge caused by act of war or negligence of Federal Government.

(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

(i) Class actions; Attorney General, member of group; notice, publication in Federal Register and newspapers; trustee's action for damages to natural resources of marine environment; restoration and rehabilitation of such resources.

(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedures.

(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

(j) Procedures for filing and payment of claims for cleanup costs and damages; limitations; appeals.

(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this chapter.

(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

(k) Federal preemption unintended; additional State requirements or liability; bar against multiple recoveries.

(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.

(l) Financial responsibility.

The Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.

(m) Definitions.

As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal

Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except clean up costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

(n) Study for a uniform law for cleanup costs and damages from oil spills; adjudication and settlement of claims; report to Congress.

(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after January 3, 1975. (Pub. L. 93–627, § 18, Jan. 3, 1975, 88 Stat. 2141.)

§ 1518. Relationship to other laws.

(a) Federal Constitution, laws, and treaties applicable; other Federal requirements applicable; status of deepwater port; Federal or State authorities and responsibilities within territorial seas unaffected.

(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this chapter and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this chapter shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this chapter do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this chapter, nothing in this chapter shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(b) Law of nearest adjacent coastal State as applicable Federal law; Federal administration and enforcement of such law; nearest adjacent coastal State defined.

The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this chapter, to the extent applicable and not inconsistent with any provision or regulation under this chapter or other Federal laws and regualtions now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c) Vessels of foreign states subject to Federal jurisdiction; designation of agent for service of process.

Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this chapter unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this chapter, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(d) Customs laws inapplicable to deepwater port; duties and taxes on foreign articles imported into customs territory of United States.

The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this chapter, but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(e) Federal district courts; original jurisdiction; venue.

The United States district courts shall have original jurisdiction of cases and controversies arising

out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose. (Pub. L. 93–627, § 19(a)–(e), Jan. 3, 1975, 88 Stat. 2145, 2146.)

§ 1519. Annual report by Secretary to Congress; recommendations to Congress.

Within 6 months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives (1) a report on the administration of this chapter during such fiscal year, including all deepwater port development activities; (2) a summary of management, supervision, and enforcement activities; and (3) recommendations to the Congress for such additional legislative authority as may be necessary to improve the management and safety of deepwater port development and for resolution of jurisdictional conflicts or ambiguities. (Pub. L. 93–627, § 20, Jan. 3, 1975, 88 Stat. 2146.)

§ 1520. Pipeline safety and operation.

(a) Standards and regulations for Outer Continental Shelf.

The Secretary, in cooperation with the Secretary of the Interior, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of oil pipelines on the Outer Continental Shelf.

(b) Report to Congress; monitoring requirements for Federal lands and Outer Continental Shelf.

The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to report to the Congress within 60 days after January 3, 1975, on appropriations and staffing needed to monitor pipelines on Federal lands and the Outer Continental Shelf so as to assure that they meet all applicable standards for construction, operation, and maintenance.

(c) Report to Congress; review of laws and regulations affecting Federal lands and Outer Continental Shelf.

The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to review all laws and regulations relating to the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf and to report to Congress thereon within 6 months after January 3, 1975, on administrative changes needed and recommendations for new legislation. (Pub. L. 93–627, § 21, Jan. 3, 1975, 88 Stat. 2146.)

§ 1521. Negotiations with Canada and Mexico; report to Congress.

The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interest of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action. (Pub. L. 93–627, § 22, Jan. 3, 1975, 88 Stat. 2147.)

§ 1522. Limitations on export provisions of section 185(u) of Title 30 unaffected.

Nothing in this chapter shall be construed to amend, restrict, or otherwise limit the application of section 185(u) of Title 30. (Pub. L. 93–627, § 23, Jan. 3, 1975, 88 Stat. 2147.)

§ 1523. General procedures; issuance and enforcement of orders; scope of authority; evidentiary matters.

The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this chapter. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses. (Pub. L. 93–627, § 24, Jan. 3, 1975, 88 Stat. 2147.)

§ 1524. Authorization of appropriations.

There is authorized to be appropriated for administration of this chapter not to exceed $2,500,000 for the fiscal year ending June 30, 1975, not to exceed $2,500,000 for the fiscal year ending June 30, 1976, and not to exceed $2,500,000 for the fiscal year ending June 30, 1977. (Pub. L. 93–627, § 25, Jan. 3, 1975, 88 Stat. 2147.)

9. Intervention on the High Seas Act—Oil

33 U.S.C. 1471–1487

Sec.
1471. Definitions.
1472. Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas.
1473. Same; list of Federal interests directly threatened or affected.

§ 1471. Definitions.

As used in this chapter—

(1) "ship" means—

(A) any seagoing vessel of any type whatsoever, and

(B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

(2) "oil" means crude oil, fuel oil, diesel oil, and lubricating oil;

(3) "convention" means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;

(4) "Secretary" means the Secretary of the department in which the Coast Guard is operating; and

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 93–248, § 2, Feb. 5, 1974, 88 Stat. 8.)

§ 1472. Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas.

Whenever a ship collision, stranding, or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 1479 of this title, without liability for any damage to the owners or operators of the ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the Convention and this chapter, to prevent, mitigate, or eliminate that danger. (Pub. L. 93–248, § 3, Feb. 5, 1974, 88 Stat. 8.)

§ 1473. Same; list of Federal interests directly threatened or affected.

In determining whether there is grave and imminent danger of major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States directly threatened or affected including but not limited to, fish, shellfish, and other living marine resources, wildlife, coastal zone and estuarine activities, and public and private shorelines and beaches. (Pub. L. 93–248, § 4, Feb. 5, 1974, 88 Stat. 9.)

§ 1474. Federal intervention actions.

Upon a determination under section 1472 of this title of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may—

(1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;

(2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and

(3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

(Pub. L. 93–248, § 5, Feb. 5, 1974, 88 Stat. 9.)

§ 1475. Consultation procedure.

Before taking any measure under section 1474 of this title, the Secretary shall—

(1) consult, through the Secretary of State, with other countries affected by the marine casualty, and particularly with the flag country of any ship involved;

(2) notify without delay the Administrator of the Environmental Protection Agency and any other persons known to the Secretary, or of whom he later becomes aware, who have interests which can reasonably be expected to be affected by any proposed measures; and

(3) consider any views submitted in response to the consultation or notification required by subsections (1) and (2) of this section.

(Pub. L. 93–248, § 6, Feb. 5, 1974, 88 Stat. 9.)

§ 1476. Emergencies.

In cases of extreme urgency requiring measures to be taken immediately, the Secretary may take those measures rendered necessary by the urgency of the situation without the prior consultation or notification as required by section 1475 of this title or without the continuation of consultations already begun. (Pub. L. 93–248, § 7, Feb. 5, 1974, 88 Stat. 9.)

§ 1477. Reasonable measures; considerations.

(a) Measures directed or conducted under this chapter shall be proportionate to the damage, actual or threatened, to the coastline or related interests of the United States and may not go beyond what is reasonably necessary to prevent, mitigate, or eliminate that damage.

(b) In considering whether measures are propor-

tionate to the damage the Secretary shall, among other things, consider—

(1) the extent and probability of imminent damage if those measures are not taken;

(2) the likelihood of effectiveness of those measures; and

(3) the extent of the damage which may be caused by those measures.

(Pub. L. 93–248, § 8, Feb. 5, 1974, 88 Stat. 9.)

§ 1478. Personal, flag state, and foreign state considerations.

In the direction and conduct of measures under this chapter the Secretary shall use his best endeavors to—

(1) assure the avoidance of risk to human life;

(2) render all possible aid to distressed persons, including facilitating repatriation of ships' crews; and

(3) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

(Pub. L. 93–248, § 9, Feb. 5, 1974, 88 Stat. 9.)

§ 1479. Federal liability for unreasonable damages; jurisdiction.

(a) The United States shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in section 1472 of this title.

(b) Actions against the United States seeking compensation for any excessive measures may be brought in the United States Court of Claims, in any district court of the United States, and in those courts enumerated in section 460 of Title 28. For purposes of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii, and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam. (Pub. L. 93–248, § 10, Feb. 5, 1974, 88 Stat. 10.)

§ 1480. Notification by Secretary of State.

The Secretary of State shall notify without delay foreign states concerned, the Secretary-General of the Inter-Governmental Maritime Consultative Organization, and persons affected by measures taken under this chapter. (Pub. L. 93–248, § 11, Feb. 5, 1974, 88 Stat. 10.)

§ 1481. Violations; penalties.

(a) Any person who—

(1) willfully violates a provision of this chapter or a regulation issued thereunder; or

(2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this chapter; or

(3) willfully obstructs any person who is acting in compliance with an order or direction under this chapter, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(b) In a criminal proceeding for an offense under paragraph (1) or (2) of subsection (a) of this section it shall be a defense for the accused to prove that he used all due diligence to comply with any order or direction that he had reasonable cause to believe that compliance would have resulted in serious risk to human life. (Pub. L. 93–248, § 12, Feb. 5, 1974, 88 Stat. 10.)

§ 1482. Experts and arbitrators; nomination.

(a) The Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, may nominate individuals to the list of experts provided for in article III of the convention.

(b) The Secretary of State, in consultation with the Secretary, shall designate or nominate, as appropriate and necessary, the negotiators, conciliators, or arbitrators provided for by the convention and the annexes thereto. (Pub. L. 93–248, § 13, Feb. 5, 1974, 88 Stat. 10.)

§ 1483. Foreign Government ships; immunity.

No measures may be taken under authority of this chapter against any warship or other ship owned or operated by a country and used, for the time being, only on Government noncommercial service. (Pub. L. 93–248, § 14, Feb. 5, 1974, 88 Stat. 10.)

§ 1484. Interpretation and administration; other right, duty, privilege, or immunity and other remedy unaffected.

This chapter shall be interpreted and administered in a manner consistent with the convention and other international law. Except as specifically provided, nothing in this chapter may be interpreted to prejudice any otherwise applicable right, duty, privilege, or immunity or deprive any country or person of any remedy otherwise applicable. (Pub. L. 93–248, § 15, Feb. 5, 1974, 88 Stat. 10.)

§ 1485. Rules and regulations.

The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this chapter. (Pub. L. 93–248, § 16, Feb. 5, 1974, 88 Stat. 10.)

§ 1486. Revolving fund for Federal actions and activities.

The revolving fund established under section 1321 (k) of this title shall be available to the Secretary for Federal actions and activities under section 1474 of this title. (Pub. L. 93–248, § 17, Feb. 5, 1974, 88 Stat. 10.)

§ 1487. Effective date.

This chapter shall be effective upon February 5, 1974, or upon the date the convention becomes effective as to the United States, whichever is later. (Pub. L. 93–248, § 18, Feb. 5, 1974, 88 Stat. 10.)

10. Marine Biological and Oceanographic Research Laboratory at LaJolla, California

Public Law 89-302 (79 Stat. 1124)

AN ACT

Relating to the use by the Secretary of the Interior of land at La Jolla, California, donated by the University of California for a marine biological research laboratory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to carry out the understanding between the Secretary of the Interior and the Regents of the University of California when the latter donated approximately two and four-tenths acres of land situated on the San Diego Campus of the University of California, for establishment thereon by the United States of a marine biological research laboratory, and in recognition of the restriction in the deed conveying the land to the United States which requires the land "to be used exclusively for research on the living resources of the sea or their environment; or for purposes compatible with activities of the * * * Scripps Institution of Oceanography (situated on said Campus) or for any other purpose expressly approved by the Grantor", the Secretary of the Interior is authorized and directed to reconvey to the Regents of the University of California, or their successors, title to the donated land and the improvements constructed or placed thereon:

(a) Whenever he determines that the land and improvements are not in his judgment needed by the United States for the limited uses permitted by the deed, such determination to be made after receiving the views of other Federal agencies regarding their possible use of the land consistent with the limitations in the deed; or

(b) Whenever the United States ceases to use the land and improvements for more than two years exclusively for such limited uses.

Approved October 30, 1965.

11. Marine Resources and Engineering Development

33 U.S.C. 1101-1108

Sec.

§ 1101. Congressional declaration of policy and objectives.

(a) It is hereby declared to be the policy of the United States to develop, encourage, and maintain a coordinated, comprehensive, and long-range national program in marine science for the benefit of mankind to assist in protection of health and property, enhancement of commerce, transportation, and national security, rehabilitation of our commercial fisheries, and increased utilization of these and other resources.

(b) The marine science activities of the United States should be conducted so as to contribute to the following objectives:

(1) The accelerated development of the resources of the marine environment.

(2) The expansion of human knowledge of the marine environment.

(3) The encouragement of private investment enterprise in exploration, technological development, marine commerce, and economic utilization of the resources of the marine environment.

(4) The preservation of the role of the United States as a leader in marine science and resource development.

(5) The advancement of education and training in marine science.

(6) The development and improvement of the capabilities, performance, use, and efficiency of vehicles, equipment, and instruments for use in exploration, research, surveys, the recovery of resources, and the transmission of energy in the marine environment.

(7) The effective utilization of the scientific and

engineering resources of the Nation, with close cooperation among all interested agencies, public and private, in order to avoid unnecessary duplication of effort, facilities, and equipment, or waste.

(8) The cooperation by the United States with other nations and groups of nations and international organizations in marine science activities when such cooperation is in the national interest.

(Pub. L. 89–454, title I, § 2, June 17, 1966, 80 Stat. 203.)

§ 1102. National Council on Marine Resources and Engineering Development.

(a) Establishment; composition; Chairman.

There is hereby established, in the Executive Office of the President, the National Council on Marine Resources and Engineering Development (hereinafter called the "Council") which shall be composed of—

(1) The Vice President, who shall be Chairman of the Council.

(2) The Secretary of State.

(3) The Secretary of the Navy.

(4) The Secretary of the Interior.

(5) The Secretary of Commerce.

(6) The Chairman of the Atomic Energy Commission.

(7) The Director of the National Science Foundation.

(8) The Secretary of Health, Education, and Welfare.

(9) The Secretary of Transportation.

(b) Executive appointments.

The President may name to the Council such other officers and officials as he deems advisable.

(c) Alternate presiding officer over Council meetings.

The President shall from time to time designate one of the members of the Council to preside over meetings of the Council during the absence, disability, or unavailability of the Chairman.

(d) Alternates for service on the Council.

Each member of the Council, except those designated pursuant to subsection (b) of this section, may designate any officer of his department or agency appointed with the advice and consent of the Senate to serve on the Council as his alternate in his unavoidable absence.

(e) Personnel; civilian executive secretary.

The Council may employ a staff to be headed by a civilian executive secretary who shall be appointed by the President and shall receive compensation at a rate established by the President at not to exceed that of level II of the Federal Executive Salary Schedule. The executive secretary, subject to the direction of the Council, is authorized to appoint and fix the compensation of such personnel, including not more than seven persons who may be appointed without regard to civil service laws or chapter 51 and subchapter III of chapter 53 of title 5 and compensated at not to exceed the highest rate of grade 18 of the General Schedule as amended, as may be necessary to perform such duties as may be prescribed by the President.

(f) Termination date.

The provisions of this chapter with respect to the Council shall expire on June 30, 1971. (Pub. L. 89–454, title I, § 3, June 17, 1966, 80 Stat. 204; Pub. L. 89–670, § 8(j), Oct. 15, 1966, 80 Stat. 943; Pub. L. 90–242, § 2, Jan. 2, 1968, 81 Stat. 780; Pub. L. 90–15, § 1, May 23, 1969, 83 Stat. 10; Pub. L. 91–414, Sept. 25, 1970, 84 Stat. 865.)

AMENDMENT

1970—Subsec. (f). Pub. L. 91–414 substituted "June 30, 1971" for "June 30, 1970".

1969—Subsec. (f). Pub. L. 91–15 substituted "June 30, 1970" for "June 30, 1969".

1968—Subsec. (f). Pub. L. 90–242 substituted "on June 30, 1969" for "one hundred and twenty days after the submission of the final report of the Commission pursuant to section 1104(h) of this title".

1966—Subsec. (a)(9). Pub. L. 89–670 substituted "Secretary of Transportation" for "Secretary of the Treasury".

§ 1103. Executive responsibilities; utilization of staff, interagency, and non-Government advisory arrangements; consultation with agencies; solicitation of views of non-Federal agencies.

(a) In conformity with the provisions of section 1101 of this title, it shall be the duty of the President with the advice and assistance of the Council to—

(1) survey all significant marine science activities, including the policies, plans, programs, and accomplishments of all departments and agencies of the United States engaged in such activities;

(2) develop a comprehensive program of marine science activities, including, but not limited to, exploration, description and prediction of the marine environment, exploitation and conservation of the resources of the marine environment, marine engineering, studies of air-sea interaction, transmission of energy, and communications, to be conducted by departments and agencies of the United States, independently or in cooperation with such non-Federal organizations as States, institutions and industry;

(3) designate and fix responsibility for the conduct of the foregoing marine science activities by departments and agencies of the United States;

(4) insure cooperation and resolve differences arising among departments and agencies of the United States with respect to marine science activities under this chapter, including differences as to whether a particular project is a marine science activity;

(5) undertake a comprehensive study, by contract or otherwise, of the legal problems arising out of the management, use, development, recovery, and control of the resources of the marine environment;

(6) establish long-range studies of the potential benefits to the United States economy, security, health, and welfare to be gained from marine resources, engineering, and science, and the costs involved in obtaining such benefits; and

(7) review annually all marine science activities conducted by departments and agencies of the United States in light of the policies, plans, programs, and priorities developed pursuant to this chapter.

(b) In the planning and conduct of a coordinated

Federal program the President and the Council shall utilize such staff, interagency, and non-Government advisory arrangements as they may find necessary and appropriate and shall consult with departments and agencies concerned with marine science activities and solicit the views of non-Federal organizations and individuals with capabilities in marine sciences. (Pub. L. 89-454, title I, § 4, June 17, 1966, 80 Stat. 205; Pub. L. 89-688, § 2(b), Oct. 15, 1966, 80 Stat. 1001.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-688 in the introductory material preceding par. (1), substituted "section 2 of this title" for "section 2 of this Act", which, for purposes of codification had been changed to "section 1101 of this title."

§ 1104. Commission on Marine Science, Engineering, and Resources.

(a) Establishment; composition; representation of interests; advisory members; Chairman and Vice Chairman.

The President shall establish a Commission on Marine Science, Engineering, and Resources (in this subchapter referred to as the "Commission"). The Commission shall be composed of fifteen members appointed by the President, including individuals drawn from Federal and State governments, industry, universities, laboratories and other institutions engaged in marine scientific or technological pursuits, but not more than five members shall be from the Federal Government. In addition the Commission shall have four advisory members appointed by the President from among the Members of the Senate and the House of Representatives. Such advisory members shall not participate, except in an advisory capacity, in the formulation of the findings and recommendations of the Commission. The President shall select a Chairman and Vice Chairman from among such fifteen members. The Vice Chairman shall act as Chairman in the latter's absence.

(b) National oceanographic program based upon investigation and study of marine science; adequacy of marine science activities for meeting stated objectives.

The Commission shall make a comprehensive investigation and study of all aspects of marine science in order to recommend an overall plan for an adequate national oceanographic program that will meet the present and future national needs. The Commission shall undertake a review of existing and planned marine science activities of the United States in order to assess their adequacy in meeting the objectives set forth under section 1101(b) of this title, including but not limited to the following:

(1) Review the known and contemplated needs for natural resources from the marine environment to maintain our expanding national economy.

(2) Review the surveys, applied research programs, and ocean engineering projects required to obtain the needed resources from the marine environment.

(3) Review the existing national research programs to insure realistic and adequate support for basic oceanographic research that will enhance human welfare and scientific knowledge.

(4) Review the existing oceanographic and ocean engineering programs, including education and technical training, to determine which programs are required to advance our national oceanographic competence and stature and which are not adequately supported.

(5) Analyze the findings of the above reviews, including the economic factors involved, and recommend an adequate national marine science program that will meet the present and future national needs without unnecessary duplication of effort.

(6) Recommend a Governmental organizational plan with estimated cost.

(c) Compensation and travel expenses of members.

Members of the Commission appointed from outside the Government shall each receive $100 per diem when engaged in the actual performance of duties of the Commission and reimbursement of travel expenses, including per diem in lieu of subsistence, as authorized in section 73b-2 of Title 5, for persons employed intermittently. Members of the Commission appointed from within the Government shall serve without additional compensation to that received for their services to the Government but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized in sections 835 to 842 of Title 5.

(d) Appointment and compensation of personnel including temporary services of experts or consultants.

The Commission shall appoint and fix the compensation of such personnel as it deems advisable in accordance with the civil service laws and chapter 51 and subchapter III of chapter 53 of Title 5. In addition, the Commission may secure temporary and intermittent services to the same extent as is authorized for the departments by section 55a of Title 5 but at rates not to exceed $100 per diem for individuals.

(e) Powers and duties of Chairman.

The Chairman of the Commission shall be responsible for (1) the assignment of duties and responsibilities among such personnel and their continuing supervision, and (2) the use and expenditures of funds available to the Commission. In carrying out the provisions of this subsection, the Chairman shall be governed by the general policies of the Commission with respect to the work to be accomplished by it and the timing thereof.

(f) Financial and administrative services of General Services Administration; payment for services; application of Administration regulations for collection of indebtedness of personnel resulting from erroneous payments and for administrative control of funds.

Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) may be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services: *Provided*, That the

regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments (section 46d of Title 5) shall apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of said Administrator for the administrative control of funds (section 665(g) of Title 31) shall apply to appropriations of the Commission: *And provided further*, That the Commission shall not be required to prescribe such regulations.

(g) Information from Government agencies.

The Commission is authorized to secure directly from any executive department, agency, or independent instrumentality of the Government any information it deems necessary to carry out its functions under this chapter; and each such department, agency, and instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information to the Commission, upon request made by the Chairman.

(h) Report to President and Congress; termination date.

The Commission shall submit to the President, via the Council, and to the Congress not later than twenty-four months after the establishment of the Commission as provided in subsection (a) of this section, a final report of its findings and recommendations. The Commission shall cease to exist thirty days after it has submitted its final report. (Pub. L. 89–454, title I, § 5, June 17, 1966, 80 Stat. 205; Pub. L. 89–688, § 2(b), Oct. 15, 1966, 80 Stat. 1001; Pub. L. 90–242, § 1, Jan. 2, 1968, 81 Stat. 780.)

AMENDMENTS

1968—Subsec. (h). Pub. L. 90–242 substituted "twenty-four months" for "eighteen months".

1966—Subsec. (a). Pub. L. 89–688 substituted "this title", for "this Act", which, for purposes of codification, had been changed to "this subchapter".

§ 1105. International cooperation.

The Council, under the foreign policy guidance of the President and as he may request, shall coordinate a program of international cooperation in work done pursuant to this chapter, pursuant to agreements made by the President with the advice and consent of the Senate. (Pub. L. 89–454, title I, § 6, June 17, 1966, 80 Stat. 207.)

§ 1106. Reports to Congress.

(a) The President shall transmit to the Congress in January of each year a report, which shall include (1) a comprehensive description of the activities and the accomplishments of all agencies and departments of the United States in the field of marine science during the preceding fiscal year, and (2) an evaluation of such activities and accomplishments in terms of the objectives set forth pursuant to this chapter.

(b) Reports made under this section shall contain such recommendations for legislation as the President may consider necessary or desirable for the attainment of the objectives of this chapter, and shall contain an estimate of funding requirements of each agency and department of the United States for marine science activities during the succeeding fiscal year. (Pub. L. 89–454, title I, § 7, June 17, 1966, 80 Stat. 207.)

§ 1107. Definitions.

For the purposes of this subchapter, the term "marine science" shall be deemed to apply to oceanographic and scientific endeavors and disciplines, and engineering and technology in and with relation to the marine environment; and the term "marine environment" shall be deemed to include (a) the oceans, (b) the Continental Shelf of the United States, (c) the Great Lakes, (d) seabed and subsoil of the submarine areas adjacent to the coasts of the United States to the depth of two hundred meters, or beyond that limit, to where the depths of the superjacent waters admit of the exploitation of the natural resources of such areas, (e) the seabed and subsoil of similar submarine areas adjacent to the coasts of islands which comprise United States territory, and (f) the resources thereof (Pub. L. 89–454, title I, § 8, June 17, 1966, 80 Stat. 208; Pub. L. 89–688, § 2(b), Oct. 15, 1966, 80 Stat. 1001.)

§ 1108. Authorization of appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out this subchapter, but sums appropriated for any one fiscal year shall not exceed $1,200,000. (Pub. L. 89–454, title I, § 9, June 17, 1966, 80 Stat. 208; Pub. L. 89–688, § 2(b), Oct. 15, 1966, 80 Stat. 1001; Pub. L. 91–15, § 2, May 23, 1969, 83 Stat. 10.)

12. National Advisory Committee on Oceans and Atmosphere

33 U.S.C. 857–6 to 857–12

Sec.

§ 857–6. National Advisory Committee on Oceans and Atmosphere; establishment.

There is hereby established a committee of twenty-five members to be known as the National Advisory Committee on Oceans and Atmosphere, (hereafter referred to in sections 857–6 to 857–12 of this title as the "Advisory Committee"). (Pub. L. 92–125, § 1, Aug. 16, 1971, 85 Stat. 344.)

§ 857–7. Same; membership.

(a) Appointment; representation.

The members of the Advisory Committee, who may not be full-time officers or employees of the United States, shall be appointed by the President and shall be drawn from State and local government, industry, science, and other appropriate areas.

(b) Term of office.

Except as provided in subsections (c) and (d) of this section, members shall be appointed for terms of three years.

(c) Term of original appointees.

Of the members first appointed, as designated by the President at the time of appointment—

(1) nine shall be appointed for a term of one year,

(2) eight shall be appointed for a term of two years, and

(3) eight shall be appointed for a term of three years.

(d) Vacancies; service beyond term.

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(e) Chairman; Vice Chairman.

The President shall designate one of the members of the Advisory Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman. (Pub. L. 92–125, § 2, Aug. 16, 1971, 85 Stat. 344.)

§ 857–8. Same; senior policy officials as Federal observers and aids.

Each department and agency of the Federal Government concerned with marine and atmospheric matters shall designate a senior policy official to participate as observer in the work of the Advisory Committee and to offer necessary assistance. (Pub. L. 92–125, § 3, Aug. 16, 1971, 85 Stat. 344.)

§ 857–9. Same; duties; reports to President and Congress.

The Advisory Committee shall (1) undertake a continuing review of national ocean policy, coastal zone management, and the progress of the marine and atmospheric science and service programs of the United States, and (2) advise the Secretary of Commerce with respect to the carrying out of the purpose of the National Oceanic and Atmospheric Administration. The Advisory Committee shall submit a comprehensive annual report to the President and to the Congress setting forth an overall assessment of the status of the Nation's marine and atmospheric activities and shall submit such other reports as may from time to time be requested by the President and the Congress. Each such report shall be submitted to the Secretary of Commerce who shall, within 90 days after receipt thereof, transmit copies to the President and to the Congress, with his comments and recommendations. The comprehensive annual report required herein shall be submitted on or before June 30 of each year, beginning June 30, 1972. (Pub. L. 92–125, § 4, Aug. 16, 1971, 85 Stat. 344, amended Pub. L. 94–69, § 2, Aug. 5, 1975, 89 Stat. 384.)

AMENDMENTS

1975—Pub. L. 94–69 added "national ocean policy, coastal zone management, and" following "review of", and substituted "requested by the President and the Congress" for "requested by the President".

§ 857–10. Same; compensation and travel expenses.

Members of the Advisory Committee shall, while serving on business of the Committee, be entitled to receive compensation at rates not to exceed $100 per diem, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of Title 5 for persons in Government service employed intermittently. (Pub. L. 92–125, § 5, Aug. 16, 1971, 85 Stat. 344.)

§ 857–11. Same; Department of Commerce and other Federal agencies, assistance.

The Secretary of Commerce shall make available to the Advisory Committee such staff, information, personnel and administrative services and assistance as it may reasonably require to carry out its activities. The Advisory Committee is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information and assistance it deems necessary to carry out its functions under sections 857–6 to 857–12 of this title; and each such department, agency, and instrumentality is authorized to cooperate with the Advisory Committee and, to the extent permitted by law, to furnish such information and assistance to the Advisory Committee upon request made by its Chairman, without reimbursement for such services and assistance. (Pub. L. 92–125, § 6, Aug. 16, 1971, 85 Stat. 345.)

§ 857–12. Same; authorization of appropriations.

There are hereby authorized to be appropriated to the Secretary of Commerce such sums as may be necessary for expenses incident to the administration of sections 857–6 to 857–12 of this title, not to exceed the following amounts: (1) $400,000 for the fiscal year ending June 30, 1973, and for each of the 2 fiscal years immediately thereafter; (2) $445,000 for the fiscal year ending June 30, 1976; (3) $111,250 for the transitional period (July 1 through September 30, 1976); and (4) $445,000 for the fiscal year ending September 30, 1977. (Pub. L. 92–125, § 7, Aug. 16, 1971, 85 Stat. 345, amended Pub. L. 92–567, Oct.

25, 1972, 86 Stat. 1181; Pub. L. 94–69, § 1, Aug. 5, 1975, 89 Stat. 384.)

AMENDMENTS

1975—Pub. L. 94–69 substituted provisions authorizing to be appropriated not to exceed $445,000 for the fiscal year ending June 30, 1976, $111,250 for the transition period (July 1 through Sept. 30, 1976), and $445,000 for the fiscal year ending Sept. 30, 1977 for provisions authorizing to be appropriated for succeeding fiscal years only such sums as may be authorized by law.

1972—Pub. L. 92–567 deleted appropriations authorization of $200,000 for fiscal year ending June 30, 1972, substituted authorization of not to exceed $400,000 for fiscal years ending June 30, 1973, 1974, and 1975, for prior authorization of $200,000 for fiscal years ending June 30, 1973, and succeeding fiscal years, and provided for such sums as may be authorized by law for succeeding fiscal years.

13. National Oceanic and Atmospheric Administration—Reorganization Plan No. 4 of 1970

(84 Stat. 2090)

Eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SECTION 1. TRANSFERS TO SECRETARY OF COMMERCE

The following are hereby transferred to the Secretary of Commerce:

(a) All functions vested by law in the Bureau of Commercial Fisheries of the Department of the Interior or in its head, together with all functions vested by law in the Secretary of the Interior or the Department of the Interior which are administered through that Bureau or are primarily related to the Bureau, exclusive of functions with respect to (1) Great Lakes fishery research and activities related to the Great Lakes Fisheries Commission, (2) Missouri River Reservoir research, (3) the Gulf Breeze Biological Laboratory of the said Bureau at Gulf Breeze, Florida, and (4) Trans-Alaska pipeline investigations.

(b) The functions vested in the Secretary of the Interior by the Act of September 22, 1959 (Public Law 86–359, 73 Stat. 642, 16 U.S.C. 760e–760g; relating to migratory marine species of game fish).

(c) The functions vested by law in the Secretary of the Interior, or in the Department of the Interior or in any officer or instrumentality of that Department, which are administered through the Marine Minerals Technology Center of the Bureau of Mines.

(d) All functions vested in the National Science Foundation by the National Sea Grant College and Program Act of 1966 (80 Stat. 998), as amended (33 U.S.C. 1121 et seq.).

(e) Those functions vested in the Secretary of Defense or in any officer, employee, or organizational entity of the Department of Defense by the provision of Public Law 91–144, 83 Stat. 326, under the heading "Operation and maintenance, general" with respect to "surveys and charting of northern and northwestern lakes and connecting waters," or by other law, which come under the mission assigned as of July 1, 1969, to the United States Army Engineer District, Lake Survey, Corps of Engineers, Department of the Army and relate to (1) the conduct of hydrographic surveys of the Great Lakes and their outflow rivers, Lake Champlain, New York State Barge Canals, and the Minnesota-Ontario border lakes, and the compilation and publication of navigation charts, including recreational aspects, and the Great Lakes Pilot for the benefit and use of the public, (2) the conception, planning, and conduct of basic research and development in the fields of water motion, water characteristics, water quantity, and ice and snow, and (3) the publication of data and the results of research projects in forms useful to the Corps of Engineers and the public, and the operation of a Regional Data Center for the collection, coordination, analysis, and the furnishing to interested agencies of data relating to water resources of the Great Lakes.

(f) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Secretary of Commerce of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Secretary of Commerce made by this section shall be deemed to include the transfer of authority, provided by law, to prescribe regulations relating primarily to the transferred functions.

SEC. 2. ESTABLISHMENT OF ADMINISTRATION

(a) There is hereby established in the Department of Commerce an agency which shall be known as the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administration."

(b) There shall be at the head of the Administration the Administrator of the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(c) There shall be in the Administration a Deputy Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Administration an Associate Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Associate Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator and Deputy Administrator. The office of Associate Administrator may be filled at the discretion of the President by appointment (by and with the advice and consent of the Senate) from the active list of commissioned officers of the Administration in which case the appointment shall create a vacancy on the active list and while holding the office of Associate Administrator the officer shall have rank, pay, and allowances not exceeding those of a vice admiral.

(e) There shall be in the Administration three additional officers who shall perform such functions as the Administrator shall from time to time assign or delegate. Each such officer shall be appointed by the Secretary, subject to the approval of the President, under the classified civil service, shall have such title as the Secretary shall from time to time determine, and shall receive

compensation at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(f) The President may appoint in the Administration, by and with the advice and consent of the Senate, two commissioned officers to serve at any one time as the designated heads of two principal constituent organizational entities of the Administration, or the President may designate one such officer as the head of such an organizational entity and the other as head of the commissioned corps of the Administration. Any such designation shall create a vacancy on the active list and the officer while serving under this subsection shall have the rank, pay, and allowances of a rear admiral (upper half).

(g) Any commissioned officer of the Administration who has served under (d) or (f) and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay, and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of captain, shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of captain and such officer shall be an extra number in that grade.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to the functions transferred hereunder to the Secretary of Commerce.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Commerce by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Commerce at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Environmental Science Services Administration shall become personnel, property, records, and unexpended balances of the National Oceanic and Atmospheric Administration or of such other organizational entity or entities of the Department of Commerce as the Secretary of Commerce shall determine.

(d) The Commissioned Officer Corps of the Environmental Science Services Administration shall become the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration. Members of the Corps, including those appointed hereafter, shall be entitled to all rights, privileges, and benefits heretofore available under any law to commissioned officers of the Environmental Science Services Administration, including those rights, privileges, and benefits heretofore accorded by law to commissioned officers of the former Coast and Geodetic Survey.

(e) Any personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Bureau of Commercial Fisheries not otherwise transferred shall become personnel, property, records, and unexpended balances of such organizational entity or entities of the Department of the Interior as the Secretary of the Interior shall determine.

SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator and authorize any such person to act as Associate Administrator.

(c) The President may similarly authorize a member of the former Commissioned Officer Corps of the Environmental Science Services Administration to act as the head of one principal constituent organizational entity of the Administration.

(d) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Environmental Science Services Administration in the Department of Commerce (established by Reorganization Plan No. 2 of 1965, 79 Stat. 1318), including the offices of Administrator of the Environmental Science Administration and Deputy Administrator of the Environmental Science Services Administration.

(2) The Bureau of Commercial Fisheries in the Department of the Interior (16 U.S.C. 742b), including the office of Director of the Bureau of Commercial Fisheries.

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of Commerce in the case of the Environmental Science Services Administration and by the Secretary of the Interior in the case of the Bureau of Commercial Fisheries.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code. The plan would transfer to the Secretary of Commerce various functions relating to the oceans and atmosphere, including commercial fishery functions, and would establish a National Oceanic and Atmospheric Administration in the Department of Commerce. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 4 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3) "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 2 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

The reorganization plan should result in the more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON

THE WHITE HOUSE, July 9, 1970.

14. National Sea Grant Colleges

P.L. 94-461 (90 Stat. 1961)

AN ACT

To improve the national sea grant program and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sea Grant Program Improvement Act of 1976".

Sec. 2. Amendment to the National Sea Grant College and Program Act of 1966.

Title II of the Marine Resources and Engineering Development Act of 1966 (33 U.S.C. 1101 et seq.) is amended to read as follows:

"TITLE II—NATIONAL SEA GRANT PROGRAM

"Sec. 201. Short title.

"This title may be cited as the 'National Sea Grant Program Act'.

"Sec. 202. Declaration of policy.

"(a) FINDINGS.—The Congress finds and declares the following:

"(1) The vitality of the Nation and the quality of life of its citizens depend increasingly on the understanding assessment, development, utilization, and conservation of ocean and coastal resources. These resources supply food, energy, and minerals and contribute to human health, the quality of the environment, national security, and the enhancement of commerce.

"(2) The understanding, assessment, development, utilization, and conservation of such resources require a broad commitment and an intense involvement on the part of the Federal Government in continuing partnership with State and local governments, private industry, universities, organizations, and individuals concerned with or affected by ocean and coastal resources.

"(3) The National Oceanic and Atmospheric Administration, through the national sea grant program, offers the most suitable locus and means for such commitment and involvement through the promotion of activities that will result in greater such understanding, assessment, development, utilization, and conservation. Continued and increased Federal support of the establishment, development, and operation of programs and projects by sea grant colleges, sea grant regional consortia, institutions of higher education, institutes, laboratories, and other appropriate public and private entities is the most cost-effective way to promote such activities.

"(b) OBJECTIVE.—The objective of this title is to increase the understanding, assessment, development, utilization, and conservation of the Nation's ocean and coastal resources by providing assistance to promote a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques.

"(c) PURPOSE.—It is the purpose of the Congress to achieve the objective of this title by extending and strengthening the national sea grant program, initially established in 1966, to promote research, education, training, and advisory service activities in fields related to ocean and coastal resources.

"Sec. 203. Definitions.

"As used in this title—

"(1) The term 'Administrator' means the National Oceanic and Atmospheric Administration.

"(2) The term 'Administrator' means the Administrator of the National Oceanic and Atmospheric Administration.

"(3) The term 'Director' means the Director of the national sea grant program, appointed pursuant to section 204(b).

"(4) The term 'field related to ocean and coastal resources' means any discipline or field (including marine science (and the physical, natural, and biological sciences, and engineering, included therein), marine technology, education, economics, sociology, communications, planning, law, international affairs, and public administration) which is concerned with or likely to improve the understanding, assessment, development, utilization, or conservation of ocean and coastal resources.

"(5) The term 'includes' and variants thereof should be read as if the phrase 'but is not limited to' were also set forth.

"(6) The term 'marine environment' means the coastal zone, as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil, and waters of the territorial sea of the United States; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the outer Continental Shelf.

"(7) The term 'ocean and coastal resources' means any resource (whether living, nonliving, manmade, tangible, intangible, actual, or potential) which is located in, derived from, or traceable to, the marine environment. Such term includes the habitat of any such living resource, the coastal space, the ecosystems, the nutrient-rich areas, and the other components of the marine environment which contribute to or provide (or which are capable of contributing to or providing) recreational, scenic, esthetic, biological, habitational, commercial, economic, or conservation values. Living resources include natural and cultured plant life, fish, shellfish, marine mammals, and wildlife. Nonliving resources include energy sources, minerals, and chemical substances.

"(8) The term 'panel' means the sea grant review panel established under section 209.

"(9) The term 'person' means any individual; any public or private corporation, partnership, or other association or entity (including any sea grant college, sea grant regional consortium, institution of higher education, institute, or laboratory); or any State, political subdivision of a State, or agency or officer thereof.

"(10) The term 'sea grant college' means any public or private institution of higher education which is designated as such by the Secretary under section 207.

"(11) The term 'sea grant program' means any program which—

"(A) is administered by any sea grant college, sea grant regional consortium, institution of higher education, institute, laboratory, or State or local agency; and

"(B) includes two or more projects involving one or more of the following activities in fields related to ocean and coastal resources:

"(i) research,

"(ii) education,

"(iii) training, or

"(iv) advisory services.

"(12) The term 'sea grant regional consortium' means any association or other alliance which is designated as such by the Secretary under section 207.

"(13) The term 'Secretary' means the Secretary of Commerce.

"(14) The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, or any other territory or possession of the United States.

"Sec. 204. National Sea Grant Program.

"(a) IN GENERAL.—The Secretary shall maintain, within the Administration, a program to be known as the national sea grant program. The national sea grant program shall consist of the financial assistance and other activities provided for in this title. The Secretary shall establish long-range planning guidelines and priorities for, and adequately evaluate, this program.

"(b) DIRECTOR.—(1) The Secretary shall appoint a Director of the national sea grant program who shall be a qualified individual who has—

"(A) knowledge or expertise in fields related to ocean and coastal resources; and

"(B) appropriate administrative experience.

"(2) The Director shall be appointed and compensated, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, at a rate not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title.

"(c) DUTIES.—The Director shall administer the national sea grant program subject to the supervision of the Secretary and the Administrator. In addition to any other duty prescribed by law or assigned by the Secretary, the Director shall—

"(1) apply the long-range planning guidelines and the priorities established by the Secretary under subsection (a);

"(2) advise the Administrator with respect to the expertise and capabilities which are available within or through the national sea grant program, and provide (as directed by the Administrator) those which are or could be of use to other offices and activities within the Administration;

"(3) evaluate activities conducted under grants and contracts awarded pursuant to sections 205 and 206 to assure that the objective set forth in section 202(b) is implemented;

"(4) encourage other Federal departments, agencies, and instrumentalities to use and take advantage of the expertise and capabilities which are available through the national sea grant program, on a cooperative or other basis;

"(5) advise the Secretary on the designation of sea grant colleges and sea grant regional consortia and, in appropriate cases, if any, on the termination or suspension of any such designation; and

"(6) encourage the formation and growth of sea grant programs.

"(d) POWERS.—To carry out the provisions of this title, the Secretary may—

"(1) appoint, assign the duties, transfer, and fix the compensation of such personnel as may be necessary, in accordance with the civil service laws; except that five positions may be established without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, but the pay rates for such positions may not exceed the maximum rate for GS–18 of the General Schedule under section 5332 of such title;

"(2) make appointments with respect to temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code;

"(3) publish or arrange for the publication of, and otherwise disseminate, in cooperation with other services, offices, and programs in the Administration, any information of research, educational, training, and other value in fields related to ocean and coastal resources and with respect to ocean and coastal resources, without regard to section 501 of title 44, United States Code;

"(4) enter into contracts, cooperative agreements, and other transactions without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);

"(5) accept donations and voluntary and uncompensated services, notwithstanding section 3679 of the Revised Statutes of the United States (31 U.S.C. 665(b)); and

"(6) issue such rules and regulations as may be necessary and appropriate.

"Sec. 205. Contracts and grants.

"(a) IN GENERAL.—The Secretary may make grants and enter into contracts under this sub-

section to assist any sea grant program or project if the Secretary finds that such program or project will—

"(1) implement the objective set forth in section 202(b); and

"(2) be responsive to the needs or problems of individual States or regions.

The total amount paid pursuant to any such grant or contract may equal 66⅔ percent, or any lesser percent, of the total cost of the sea grant program or project involved.

"(b) SPECIAL GRANTS.—The Secretary may make special grants under this subsection to implement the objective set forth in section 202(b). The amount of any such grant may equal 100 percent, or any lesser percent, of the total cost of the project involved. No grant may be made under this subsection unless the Secretary finds that—

"(1) no reasonable means is available through which the applicant can meet the matching requirement for a grant under subsection (a);

"(2) the probable benefit of such project outweighs the public interest in such matching requirement; and

"(3) the same or equivalent benefit cannot be obtained through the award of a contract or grant under subsection (a) or section 206.

The total amount which may be provided for grants under this subsection during any fiscal year shall not exceed an amount equal to 1 percent of the total funds appropriated for such year pursuant to section 212.

"(c) ELIGIBILITY AND PROCEDURE.—Any person may apply to the Secretary for a grant or contract under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Secretary shall be regulation prescribe. The Secretary shall act upon each such application within 6 months after the date on which all required information is received.

"(d) TERMS AND CONDITIONS.—(1) Any grant made, or contract entered into, under this section shall be subject to the limitations and provisions set forth in paragraphs (2), (3), and (4) and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

"(2) No payment under any grant or contract under this section may be applied to—

"(A) the purchase or rental of any land; or

"(B) the purchase, rental, construction, preservation, or repair of any building, dock, or vessel;

except that payment under any such grant or contract may, if approved by the Secretary, be applied to the purchase, rental, construction, preservation, or repair of non-self-propelled habitats, buoys, platforms, and other similar devices or structures, or to the rental of any research vessel which is used in direct support of activities under any sea grant program or project.

"(3) The total amount which may be obligated for payment pursuant to grants made to, and contracts entered into with, persons under this section within any one State in any fiscal year shall not exceed an amount equal to 15 percent of the total funds appropriated for such year pursuant to section 212.

"(4) Any person who receives or utilizes any proceeds of any grant or contract under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such cost which was provided through other sources. Such records shall be maintained for 3 years after the completion of such a program or project. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and evaluation, to any books, documents, papers, and records of receipts which, in the opinion of the Secretary or of the Comptroller General, may be related or pertinent to such grants and contracts.

"Sec. 206. National projects.

"(a) IN GENERAL.—The Secretary shall identify specific national needs and problems with respect to ocean and coastal resources. The Secretary may make grants or enter into contracts under this section with respect to such needs or problems. The amount of any such grant or contract may equal 100 percent, or any lesser percent, of the total cost of the project involved.

"(b) ELIGIBILITY AND PROCEDURE.—Any person may apply to the Secretary for a grant or contract under this section. In addition, the Secretary may invite applications with respect to specific national needs or problems identified under subsection (a). Application shall be made in such form and manner, and with such content and other submissions, as the Secretary shall by regulation prescribe. The Secretary shall act upon each such application within 6 months after the date on which all required information is received. Any grant made, or contract entered into, under this section shall be subject to the limitations and provisions set forth in section 205(d) (2) and (4) and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

"(c) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated for purposes of carrying out this section not to exceed $5,000,000 for the fiscal year ending September 30, 1977. Such sums as may be appropriated pursuant to this subsection shall remain available until expended. The amounts obligated to be expended for the purposes set forth in subsection (a) shall not, in any fiscal year, exceed an amount equal to 10 percent of the sums appropriated for such year pursuant to section 212.

"Sec. 207. Sea Grant Colleges and Sea Grant Regional Consortia.

"(a) DESIGNATION.—(1) The Secretary may designate—

"(A) any institution of higher education as a sea grant college; and

"(B) any association or other alliance of two or more persons (other than individuals) as a sea grant regional consortium.

"(2) No institution of higher education may be designated as a sea grant college unless the Secretary finds that such institution—

"(A) is maintaining a balanced program of research, education, training, and advisory services in fields related to ocean and coastal resources and has received financial assistance under section 205 of this title or under section 204(c) of the National Sea Grant College and Program Act of 1966;

"(B) will act in accordance with such guidelines as are prescribed under subsection (b)(2); and

"(C) meets such other qualifications as the Secretary deems necessary or appropriate.

The designation of any institution as a sea grant college under the authority of such Act of 1966 shall, if such designation is in effect on the day before the date of the enactment of the Sea Grant Program Improvement Act of 1976, be considered to be a designation made under paragraph (1) so long as such institution complies with subparagraphs (B) and (C).

"(3) No association or other alliance of two or more persons may be designated as a sea grant regional consortium unless the Secretary finds that such association or alliance—

"(A) is established for the purpose of sharing expertise, research, educational facilities, or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services, in any field related to ocean and coastal resources;

"(B) will encourage and follow a regional approach to solving problems or meeting needs relating to ocean and coastal resources, in cooperation with appropriate sea grant colleges, sea grant programs, and other persons in the region;

"(C) will act in accordance with such guidelines as are prescribed under subsection (b)(2); and

"(D) meets such other qualifications as the Secretary deems necessary or appropriate.

"(b) REGULATIONS.—The Secretary shall by regulation prescribe—

"(1) the qualifications required to be met under paragraphs (2)(C) and (3)(D) of subsection (a); and

"(2) guidelines relating to the activities and responsibilities of sea grant colleges and sea grant regional consortia.

"(c) SUSPENSION OR TERMINATION OF DESIGNATION.—The Secretary may, for cause and after an opportunity for hearing, suspend or terminate any designation under subsection (a).

"Sec. 208. Sea Grant Fellowships.

"(a) IN GENERAL.—The Secretary shall support a sea grant fellowship program to provide educational and training assistance to qualified individuals at the undergraduate and graduate levels of education in fields related to ocean and coastal resources. Such fellowships shall be awarded pursuant to guidelines established by the Secretary. Sea grant fellowships may only be awarded by sea grant colleges, sea grant regional consortia, institutions of higher education, and professional associations and institutes.

"(b) LIMITATION ON TOTAL FELLOWSHIP GRANTS.—The total amount which may be provided for grants under the sea grant fellowship program during any fiscal year shall not exceed an amount equal to 5 percent of the total funds appropriated for such year pursuant to section 212.

"Sec. 209. Sea Grant Review Panel.

"(a) ESTABLISHMENT.—There shall be established an independent committee to be known as the sea grant review panel. The panel shall, on the 60th day after the date of the enactment of the Sea Grant Program Improvement Act of 1976, supersede the sea grant advisory panel in existence before such date of enactment.

"(b) DUTIES.—The panel shall take such steps as may be necessary to review, and shall advise the Secretary, the Administrator, and the Director with respect to—

"(1) applications or proposals for, and performance under, grants and contracts awarded under sections 205 and 206;

"(2) the sea grant fellowship program;

"(3) the designation and operation of sea grant colleges and sea grant regional consortia, and the operation of sea grant programs;

"(4) the formulation and application of the planning guidelines and priorities under section 204 (a) and (c)(1); and

"(5) such other matters as the Secretary refers to the panel for review and advice.

The Secretary shall make available to the panel such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

"(c) MEMBERSHIP, TERMS, AND POWERS.—(1) The panel shall consist of 15 voting members who shall be appointed by the Secretary. The Director shall serve as a nonvoting member of the panel. Not less than five of the voting members of the panel shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who, by reason of knowledge, experience or training, are especially qualified in, or representative of, education, extension services, State government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (A) the director of a sea grant college, sea grant regional consortium, or

sea grant program; (B) an applicant for, or beneficiary (as determined by the Secretary) of any grant or contract under section 205 or 206; or (C) a full-time officer or employee of the United States.

"(2) The term of office of a voting member of the panel shall be 3 years, except that of the original appointees, five shall be appointed for a term of 1 year, five shall be appointed for a term of 2 years, and five shall be appointed for a term of 3 years.

"(3) Any individual appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. No individual may be appointed as a voting member after serving one full term as such a member. A voting member may serve after the date of the expiration of the term of office for which appointed until his or her successor has taken office, or until 90 days after such date, whichever is earlier.

"(4) The panel shall select one voting member to serve as the Chairman and another voting member to serve as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman.

"(5) Voting members of the panel shall—

"(A) receive compensation at the daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, when actually engaged in the performance of duties for such panel; and

"(B) be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

"(6) The panel shall meet on a biannual basis and, at any other time, at the call of the Chairman or upon the request of a majority of the voting members or of the Director.

"(7) The panel may exercise such powers as are reasonably necessary in order to carry out its duties under subsection (b).

"Sec. 210. Interagency cooperation.

"Each department, agency, or other instrumentality of the Federal Government which is engaged in or concerned with, or which has authority over, matters relating to ocean and coastal resources—

"(1) may, upon a written request from the Secretary, make available, on a reimbursable basis or otherwise any personnel (with their consent and without prejudice to their position and rating), service, or facility which the Secretary deems necessary to carry out any provision of this title;

"(2) shall, upon a written request from the Secretary, furnish any available data or other information which the Secretary deems necessary to carry out any provision of this title; and

"(3) shall cooperate with the Administration and duly authorized officials thereof.

"Sec. 211. Annual report and evaluation.

"(a) ANNUAL REPORT.—The Secretary shall submit to the Congress and the President, not later than February 15 of each year, a report on the activities of, and the outlook for, the national sea grant program.

"(b) EVALUATION.—The Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy, in the Executive Office of the President, shall have the opportunity to review each report prepared pursuant to subsection (a). Such Directors may submit, for inclusion in such report, comments and recommendations and an independent evaluation of the national sea grant program. Such material shall be transmitted to the Secretary not later than February 1 of each year, and the Secretary shall cause it to be published as a separate section in the annual report submitted pursuant to subsection (a).

"Sec. 212. Authorization for appropriations.

"There is authorized to be appropriated for purposes of carrying out the provisions of this title (other than section 206) not to exceed $50,000,000 for the fiscal year ending September 30, 1977. Such sums as may be appropriated under this section shall remain available until expended.".

Sec. 3. International cooperation assistance.

(a) IN GENERAL.—The Secretary of Commerce (hereafter in this section referred to as the "Secretary") may enter into contracts and make grants under this section to—

(1) enhance the research and development capability of developing foreign nations with respect to ocean and coastal resources, as such term is defined in section 203 of the National Sea Grant Program Act; and

(2) promote the international exchange of information and data with respect to the assessment, development, utilization, and conservation of such resources.

(b) ELIGIBILITY AND PROCEDURE.—Any sea grant college and sea grant regional consortium (as defined in section 203 of the National Sea Grant Program Act) and any institution of higher education, laboratory, or institute (if such institution, laboratory, or institute is located within any State (as defined in such section 203)) may apply for and receive financial assistance under this section. Each grant or contract under this section shall be made pursuant to such requirements as the Secretary shall, after consultation with the Secretary of State, by regulation prescribe. Application shall be made in such form, and with such content and other submissions, as may be so required. Before approving any application for a grant or contract under this section, the Secretary shall consult with the Secretary of State. Any grant made, or contract entered into, under this section shall be subject to the limitations and provisions set forth in section 205(d) (2) and (4) of the National Sea Grant Program Act and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(c) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated for purposes of carrying out this section not to exceed $3,000,000 for the fiscal year ending September 30, 1977. Such sums as may be appropriated under this section shall remain available until expended.

Sec. 4. Conforming and miscellaneous provisions.

(a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(65) Administrator, National Oceanic and Atmospheric Administration.".

(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(109) Deputy Administrator, National Oceanic and Atmospheric Administration.

"(110) Associate Administrator, National Oceanic and Atmospheric Administration.".

(c)(1) Section 2(d) of Reorganization Plan Numbered 4 of 1970 (84 Stat 2090) is amended by striking out "Level V" and "(5 U.S.C. 5316)" and inserting in lieu thereof "Level IV" and "(5 U.S.C. 5315)", respectively.

(2) The individual serving as the Associate Administrator of the National Oceanic and Atmospheric Administration (pursuant to section 2(d) of Reorganization Plan Numbered 4 of 1970) on the date of the enactment of this Act shall continue as the Associate Administrator, notwithstanding the provisions of paragraph (1).

15. Ocean Dumping

33 U.S.C. 1401–1444

Sec.

§ 1401. Congressional finding, policy and declaration of purpose.

(a) Unregulated dumping of material into ocean

waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(c) It is the purpose of this chapter to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States, if the dumping occurs in the territorial sea or the contiguous zone of the United States. (Pub. L. 92–532, § 2, Oct. 23, 1972, 86 Stat. 1052, amended Pub. L. 93–254, § 1(1), Mar. 22, 1974, 88 Stat. 50.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–254 deleted statement of the purpose of this chapter as being the regulation of transportation of material from the United States for dumping into ocean waters, and the dumping of material, transported from outside the United States, if the dumping occurs in ocean waters over which the United States has jurisdiction or over which it may exercise control, under accepted principles of international law, in order to protect its territory or territorial sea, now covered by subsec. (c) of this section.

Subsec. (c). Pub. L. 93–254 added subsec. (c).

§ 1402. Definitions.

For the purposes of this chapter the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 1322 of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(f) "Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended, under the provisions of section 407 of this title, or under the provisions of the Atomic Energy Act of 1954, as amended, nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: *And Provided further*, That it does not include the deposit of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport" or "transportation" refers to the carriage and related handling of any material by a vessel, or by any other vehicle, including aircraft.

(l) "Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

(Pub. L. 92–532, § 3, Oct. 23, 1972, 86 Stat. 1052, amended Pub. L. 93–254, § 1(2), Mar. 22, 1974, 88 Stat. 50.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–254, § 1(2)(A), substituted "sewage from vessels within the meaning of section 1322

of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping." for "oil within the meaning of section 11 of the Federal Water Pollution Control Act and does not mean sewage from vessels within the meaning of section 13 of such Act."

Subsec. (*l*). Pub. L. 93–254, § 1(2)(C), added subsec. (*l*).

SUBCHAPTER I.—REGULATION

§ 1411. Prohibited acts.

(a) Except as may be authorized by a permit issued pursuant to section 1412 or section 1413 of this title, and subject to regulations issued pursuant to section 1418 of this title,

(1) no person shall transport from the United States, and

(2) in the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location

any material for the purpose of dumping it into ocean waters.

(b) Except as may be authorized by a permit issued pursuant to section 1412 of this title, and subject to regulations issued pursuant to section 1418 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States. (Pub. L. 92–532, title I, § 101, Oct. 23, 1972, 86 Stat. 1053, amended Pub. L. 93–254, § 1(3), Mar. 22, 1974, 88 Stat. 51.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–254 incorporated existing provisions in the introductory text, substituting reference to permits issued under section 1412 or section 1413 of this title for prior reference to such issuance under this subchapter; incorporated existing provisions in item designated (1); added item (2); and substituted prohibition against transportation of any material for ocean dumping for former prohibition against such dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (b). Pub. L. 93–254 substituted reference to permits issued under section 1412 of this title for former reference to such issuance under this subchapter, made any ocean dumping subject to regulations issued under section 1418 of this title, and substituted prohibition against dumping of any material for former prohibition against dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (c). Pub. L. 93–254 deleted subsec. (c) which prohibited any officer, employee, agent, department, agency, or instrumentality of the United States from transporting from any location outside the United States any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or, except as may be authorized in a permit, any other material for purpose of dumping in ocean waters, now covered in subsec. (b) of this section.

§ 1412. Dumping permit program.

(a) Environmental Protection Agency permits.

Except in relation to dredged material, as provided for in section 1413 of this title, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued, the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft registered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 1411(b) of this title, where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes.

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and non-living resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation

with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. To the extent that he may do so without relaxing the requirements of this subchapter, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

(b) Permit categories.

The Administrator may establish and issue various categories of permits, including the general permits described in section 1414(c) of this title.

(c) Sites and times for dumping.

The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

(d) Fish wastes.

No permit is required under this subchapter for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where the Administrator makes such a finding, such material may be deposited only as authorized by a permit issued by the Administrator under this section.

(e) Foreign State permits; acceptance.

In the case of transportation of material, by a vessel or aircraft registered in the United States or flying the United States flag, from a location in a foreign State Party to the Convention, a permit issued pursuant to the authority of that foreign State Party, in accordance with Convention requirements, and which otherwise could have been issued purusant to subsection (a) of this section, shall be accepted, for the purposes of this subchapter, as if it were issued by the Administrator under the authority of this section. (Pub. L. 92–532, title I, § 102, Oct. 23, 1972, 86 Stat. 1054, amended Pub. L. 93–254, § 1(4), Mar. 22, 1974, 88 Stat. 51.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–254, § 1(4)(A), substituted "for which no permit may be issued," for "as provided for in section 1411 of this title," inserted "or in the case of a vessel or aircraft registered in the United States or flying the United States flag," after "instrumentality of the United States," and required the Administrator to apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

Subsec. (e). Pub. L. 93–254, § 1(4)(B), added subsec. (e).

§ 1413. Dumping permit program for dredged material.

(a) Issuance by Secretary of the Army.

Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) Independent determination of need for dumping, other methods of disposal, and appropriate locations.

In making the determination required by subsection (a) of this section, the Secretary shall apply those criteria, established pursuant to section 1412(a) of this title, relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 1412(c) of this title.

(c) Disagreement of Administrator with determination of Secretary of the Army.

Prior to issuing any permit under this section, the Secretary shall first notify the Administrator of his intention to do so. In any case in which the Administrator disagrees with the determination of the Secretary as to compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of the dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, the determination of the Administrator shall prevail. Unless the Administrator grants a waiver pursuant to subsection (d) of this section, the Secretary shall not issue a permit which does not comply with such criteria and with such restrictions.

(d) Waiver of requirements.

If, in any case, the Secretary finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in non-compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, he shall so certify and request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.

(e) Federal projects involving dredged material.

In connection with Federal projects involving dredged material, the Secretary may, in lieu of the

permit procedure, issue regulations which will require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under subsections (a), (b), (c), and (d) of this section. (Pub. L. 92–532, title I, § 103, Oct. 23, 1972, 86 Stat. 1055.)

§ 1414. Permit conditions.

(a) Designated and included conditions.

Permits issued under this subchapter shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

(b) Permit processing fees; reporting requirements.

The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this subchapter as he deems appropriate.

(c) General permits.

Consistent with the requirements of sections 1412 and 1413 of this title, but in lieu of a requirement for specific permits in such case, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Review.

Any permit issued under this subchapter shall be reviewed periodically and, if appropriate, revised. The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or he may alter or revoke partially or entirely the terms of permits issued by him under this subchapter, for the transportation for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds that such materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

(e) Information for review and evaluation of applications.

The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this subchapter to provide such information as he may consider necessary to review and evaluate such application.

(f) Public information.

Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this subchapter shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

(g) Display of issued permits.

A copy of any permit issued under this subchapter shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or its designee. (Pub. L. 92–532, title I, § 104, Oct. 23, 1972, 86 Stat. 1056.)

§ 1415. Penalties.

(a) Assessment of civil penalty by Administrator; remission or mitigation; court action for appropriate relief.

Any person who violates any provision of this subchapter, or of the regulations promulgated under this subchapter, or a permit issued under this subchapter shall be liable to a civil penalty of not more than $50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) Criminal penalties.

In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this subchapter, regulations promulgated under this subchapter, or a permit issued under this subchapter shall be fined not more than $50,000, or imprisoned for not more than one year, or both.

(c) Separate offenses.

For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(d) Injunctive relief.

The Attorney General or his delegate may bring

actions for equitable relief to enjoin an imminent or continuing violation of this subchapter, of regulations promulgated under this subchapter, or of permits issued under this subchapter, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) Liability of vessels in rem.

A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended, used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(f) Revocation and suspension of permits.

If the provisions of any permit issued under section 1412 or 1413 of this title are violated, the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(g) Civil suits by private persons.

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this subchapter. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the Secretary, and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this subchapter.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

(h) Emergencies.

No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe (Pub. L. 92–532, title I, § 105, Oct. 23, 1972, 86 Stat. 1057.)

§ 1416. Voiding of pre-existing licenses; impairment of navigation; consistent State programs; existing conservation program not affected.

(a) After the effective date of this subchapter, all licenses, permits, and authorizations other than those issued pursuant to this subchapter shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this subchapter, and whether issued before or after the effective date of this subchapter.

(b) The provisions of subsection (a) of this section shall not apply to actions taken before the effective date of this subchapter under the authority of the Rivers and Harbors Act of 1899, as amended.

(c) Prior to issuing any permit under this subchapter, if it appears to the Administrator that the disposition of material, other than dredged material, may adversely affect navigation in the territorial sea of the United States, or in the approaches to any harbor of the United States, or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(d) After the effective date of this subchapter, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this subchapter. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into ocean waters within its jurisdiction, or into other ocean waters to the extent that such dumping may affect waters within the jurisdiction of such State, and if the Administrator determines, after notice and opportunity for hearing, that the

proposed criteria are not inconsistent with the purposes of this subchapter, may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate or regional authority, Federal territory or Commonwealth or the District of Columbia.

(e) Nothing in this subchapter shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended. (Pub. L. 92–532, title I, § 106, Oct. 23, 1972, 86 Stat. 1058.)

§ 1417. Enforcement.

(a) Utilization of other departments, agencies, and instrumentalities.

The Administrator or the Secretary, as the case may be, may, whenever appropriate, utilize by agreement, the personnel, services and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this subchapter.

(b) Delegation of review and evaluation authority.

The Administrator or the Secretary may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) Surveillance and other enforcement activity.

The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activity shall include, but not be limited to, enforcement of regulations issued by him pursuant to section 1418 of this title, relating to safe transportation, handling, carriage, storage, and stowage. The Secretary of the Department in which the Coast Guard is operating shall supply to the Administrator and to the Attorney General, as appropriate, such information of enforcement activities and such evidentiary material assembled as they may require in carrying out their duties relative to penalty assessments, criminal prosecutions, or other actions involving litigation pursuant to the provisions of this subchapter. (Pub. L. 92–532, title I, § 107, Oct. 23, 1972, 86 Stat. 1059.)

§ 1418. Regulations.

In carrying out the responsibilites and authority conferred by this subchapter, the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating are authorized to issue such regulations as they may deem appropriate. (Pub. L. 92–532, title I, § 108, Oct. 23, 1972, 86 Stat. 1059.)

§ 1419. International cooperation.

The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other component international organizations for the development of appropriate international rules and regulations in support of the policy of this chapter. (Pub. L. 92–532, title I, § 109, Oct. 23, 1972, 86 Stat. 1060.)

§ 1420. Authorization of appropriations.

There are hereby authorized to be appropriated not to exceed $3,600,000 for fiscal year 1973, not to exceed $5,500,000 for each of the fiscal years 1974 and 1975, not to exceed $5,300,000 for fiscal year 1976, not to exceed $1,325,000 for the transition period (July 1 through September 30, 1976), and not to exceed $4,800,000 for fiscal year 1977, for the purposes and administration of this subchapter, and for succeeding fiscal years only such sum as the Congress may authorize by law. (Pub. L. 92–532, title I, § 111, Oct. 23, 1972, 86 Stat. 1060, amended Pub. L. 93–472, Oct. 26, 1974, 88 Stat. 1430; Pub. L. 94–62, § 1, July 25, 1975, 89 Stat. 303; Pub. L. 94–326, § 1, June 30, 1976, 90 Stat. 725.)

AMENDMENTS

1975—Pub. L. 94–62 substituted "not to exceed $5,500,000 for each of the fiscal years 1974 and 1975" for "and not to exceed $5,500,000 for fiscal years 1974 and 1975", and added provisions authorizing appropriation of an amount not to exceed $5,300,000 for fiscal year 1976, and not to exceed $1,325,000 for the transition period (July 1 through Sept. 30, 1976).

1974—Pub. L. 93–472 substituted "fiscal years 1974 and 1975," for "fiscal year 1974,".

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

§ 1421. Annual report to Congress.

The Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating shall each individually report annually, on or before March 1 of each year with the first report to be made on or before June 30, 1973 to the Congress, on his administration of this subchapter, including recommendations for additional legislation if deemed necessary. (Pub. L. 92–532, title I, § 112, Oct. 23, 1972, 86 Stat. 1060, amended Pub. L. 94–326, § 2, June 30, 1976, 90 Stat. 725.)

SUBCHAPTER II.—RESEARCH

§ 1441. Monitoring and research program; reports to Congress.

The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of October 23, 1972, initiate a comprehensive and continuing program of monitor-

ing and research regarding the effects of the dumping of material into ocean waters or other coastal waters where the tide ebbs and flows or into the Great Lakes or their connecting waters and shall report from time to time, not less frequently than annually, his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) to the Congress. (Pub. L. 92–532, title II, § 201, Oct. 23, 1972, 86 Stat. 1060.)

§ 1442. Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems.

(a) Secretary of Commerce.

The Secretary of Commerce, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of October 23, 1972, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. In carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans may best be preserved for the benefit of succeeding generations of mankind.

(b) Action with other nations.

In carrying out his responsibilities under this section, the Secretary of Commerce, under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of his activities by such channels of communication as may appear appropriate.

(c) Annual report to Congress.

In March of each year, the Secretary of Commerce shall report to the Congress on the results of activities undertaken by him pursuant to this section during the previous fiscal year.

(d) Cooperation of other departments, agencies, and independent instrumentalities.

Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this section and, to the extent permitted by law, to furnish such information as may be requested.

(e) Utilization of personnel, services, and facilities; inter-agency agreements.

The Secretary of Commerce, in carrying out his responsibilities under this section, shall, to the extent feasible utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities (including those of the Coast Guard for monitoring purposes), and is authorized to enter into appropriate inter-agency agreements to accomplish this action. (Pub. L. 92–532, title II, § 202, Oct. 23, 1972, 86 Stat. 1060, amended Pub. L. 94–62, § 2, July 25, 1975, 89 Stat. 303.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–62 substituted "March" for "January".

§ 1443. Cooperation with public authorities, agencies, and institutions, private agencies and institutions, and individuals.

The Secretary of Commerce shall conduct and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and to promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of determining means of minimizing or ending all dumping of materials within five years of the effective date of this Act. (Pub. L. 92–532, title II, § 203, Oct. 23, 1972, 86 Stat. 1061.)

§ 1444. Authorization of appropriations.

There are authorized to be appropriated for the first fiscal year after October 23, 1972, and for the next two fiscal years thereafter such sums as may be necessary to carry out this subchapter, but the sums appropriated for any such fiscal year may not exceed $6,000,000. There are authorized to be appropriated not to exceed $1,500,000 for the transition period, and not to exceed $5,600,000 for fiscal year 1977. (July 1 through September 30, 1976). (Pub. L. 92–532; title II, § 204, Oct. 23, 1972, 86 Stat. 1061, amended Pub. L. 94–62, § 3, July 25, 1975, 89 Stat. 303; Pub. L. 94–326, § 3, June 30, 1976, 90 Stat. 725.)

AMENDMENTS

1975—Pub. L. 94–62 added provision authorizing the appropriation of an amount not to exceed $1,500,000 for the transition period (July 1, through Sept. 30, 1976).

16. Oceanographic Research Vessels

46 U.S.C. 441–445

§ 441. Exemption of oceanographic research vessels from inspection laws; definitions.

As used in sections 441 to 445 of this title—

(1) the term "oceanographic research vessel" means a vessel which the Secretary of the department in which the Coast Guard is operating finds is being employed exclusively in instruction in oceanography or limnology, or both, or exclu-

sively in oceanographic research, including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research;

(2) the term "scientific personnel" means persons who are aboard a vessel solely for the purpose of engaging in scientific research, instructing, or receiving instruction, in oceanography or limnology.

(Pub. L. 89–99, § 1, July 30, 1965, 79 Stat. 424.)

§ 442. Vessel not considered passenger vessel.

An oceanographic research vessel shall not be considered a passenger vessel, a vessel carrying passengers, or a passenger-carrying vessel under the provisions of the laws relating to the inspection and manning of merchant vessels by reason of the carriage of scientific personnel. (Pub. L. 89–99, § 2, July 30, 1965, 79 Stat. 424.)

§ 443. Vessel not engaged in trade or commerce.

An oceanographic research vessel shall not be deemed to be engaged in trade or commerce. (Pub. L. 89–99, § 3, July 30, 1965, 79 Stat. 424.)

§ 444. Scientific personnel not considered seamen.

Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto. (Pub. L. 89–99, § 4, July 30, 1965, 79 Stat. 424.)

§ 445. Exemption by regulation.

If the Secretary of the department in which the Coast Guard is operating determines that the application to any oceanographic research vessel of any provision of title 52 or title 53 of the Revised Statutes, or Acts amendatory thereof or supplementary thereto, is not necessary in the performance of the mission of the vessel; he may by regulation exempt any such vessel from such provision, upon such terms and conditions as he may specify. (Pub. L. 89–99, § 5, July 30, 1965, 79 Stat. 424.)

17. Offshore Shrimp Fisheries

16 U.S.C. 1100b et seq.

(See Offshore Fisheries under title V *Fish Resources Preservation*)

18. Oil Pollution Act of 1961

33 U.S.C. 1001–1016

Sec.

§ 1001. Definitions.

As used in this chapter, unless the context otherwise requires—

(a) The term "convention" means the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended;

(b) The term "discharge" in relation to oil or to an oily mixture means any discharge or escape howsoever caused;

(c) The term "instantaneous rate of discharge of oil content" means the rate of discharge of oil in liters per hour at any instant divided by the speed of the ship in knots at the same instant;

(d) The term "heavy diesel oil" means diesel oil, other than those distillates of which more than 50 per centum, by volume distills at a temperature not exceeding three hundred and forty degrees centigrade when tested by American Society for Testing and Materials standard method D. 86/59;

(e) The term "mile" means a nautical mile of six thousand and eighty feet or one thousand eight hundred and fifty-two meters;

(f) The term "oil" means crude oil, fuel oil, heavy diesel oil, and lubricating oil, and "oily" shall be construed accordingly; an "oily mixture" means a mixture with any oil content;

(g) The term "person" means an individual, partnership, corporation, or association; and any owner, operator, agent, master, officer or employee of a ship;

(h) The term "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(i) The term "ship", subject to the exceptions provided in paragraph (1) of this subsection, means any seagoing vessel of any type whatsoever of American registry or nationality, including floating craft, whether self-propelled or towed by another vessel making a sea voyage; and "tanker", as a type included within the term "ship", means a ship in which the greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not, for the time being, carrying a cargo other than oil in that part of its cargo space.

(1) The following categories of vessels are excepted from all provisions of this chapter:

(i) tankers of under one hundred and fifty tons gross tonnage and other ships of under five hundred tons gross tonnage.

(ii) ships for the time being engaged in the whaling industry when actually employed on whaling operations.

(iii) ships for the time being navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of Saint Lambert lock at Montreal in the Province of Quebec, Canada.

(iv) naval ships and ships for the time being used as naval auxiliaries.

(j) The term "from the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958; except that, for the purpose of this chapter "from the nearest land" off the northeastern coast of Australia means a line drawn from a point on the coast of Australia in latitude 11 degrees south, longitude 142 degrees 08 minutes east to a point in latitude 10 degrees 35 minutes south, longitude 141 degrees 55 minutes east—

thence to a point latitude 10 degrees 00 minutes south, longitude 142 degrees 00 minutes east;

thence to a point latitude 9 degrees 10 minutes south, longitude 143 degrees 52 minutes east;

thence to a point latitude 9 degrees 00 minutes south, longitude 144 degrees 30 minutes east;

thence to a point latitude 13 degrees 00 minutes south, longitude 144 degrees 00 minutes east;

thence to a point latitude 15 degrees 00 minutes south, longitude 146 degrees 00 minutes east;

thence to a point latitude 18 degrees 00 minutes south, longitude 147 degrees 00 minutes east;

thence to a point latitude 21 degrees 00 minutes south, longitude 153 degrees 00 minutes east;

thence to a point on the coast of Australia in latitude 24 degrees 42 minutes south, longitude 153 degrees 15 minutes east. (As amended Pub. L. 93–119, § 2(1), Oct. 4, 1973, 87 Stat. 424.)

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–119, § 2(1)(C), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 93–119, § 2(1)(B), (D), redesignated former subsec. (c) as (d), and deleted the word "marine" preceding "diesel oil" and substituted "American Society for Testing and Materials" for "American Society for the Testing of Materials", respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 93–119, § 2(1)(B), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 93–119, § 2(1)(B),(E), redesignated former subsec. (e) as (f) and substituted "; an 'oily mixture' means a mixture with any oil content;" for ". An 'oily mixture' means a mixture with an oil content of one hundred parts or more in one million parts of mixture." Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 93–119, § 2(1)(A), (B), repealed former subsec. (g) which defined "prohibited zones" and redesignated former subsec. (f) as (g), respectively.

Subsec. (h). Pub. L. 93–119, § 2(1)(F), substituted as the definition for "Secretary" the "Secretary of the department in which the Coast Guard is operating" for "Secretary of Transportation".

Subsec. (j). Pub. L. 93–119, § 2(1)(G), inserted definition of "from the nearest land" off the northeastern coast of Australia.

§ 1002. Prohibition against discharge of oil or oily mixtures; permissible discharges.

Subject to the provisions of sections 1003 and 1004 of this title, the discharge of oil or oily mixture from a ship is prohibited unless—

(a) the ship is proceeding en route; and

(b) the instantaneous rate of discharge of oil content does not exceed sixty liters per mile, and

(c)(1) for a ship, other than a tanker—

(i) the oil content of the discharge is less than one hundred parts per one million parts of the mixture, and

(ii) the discharge is made as far as practicable from the nearest land;

(2) for a tanker, except discharges from ma-

chinery space bilges which shall be governed by the above provisions for ships other than tankers—

(i) the total quantity of oil discharged on a ballast voyage does not exceed the fifteen thousandths of the total cargo-carrying capacity, and

(ii) the tanker is more than fifty miles from the nearest land.

(As amended Pub. L. 93–119, § 2(2), Oct. 4, 1973, 87 Stat. 425.)

AMENDMENTS

1973—Pub. L. 93–119 substituted in introductory text "the discharge of oil or oily mixture from a ship is prohibited unless—" for "it shall be unlawful for any person to discharge oil or oily mixture from:".

Subsecs. (a)–(c). Pub. L. 93–119, in revising the text, substituted provisions of subsecs. (a) to (c) for former provisions which made unlawful the discharge of oil or oily mixture from: "(a) a tanker within any of the prohibited zones."; "(b) a ship other than a tanker, within any of the prohibited zones, except when the ship is proceeding to a port not provided with facilities adequate for the reception, without causing undue delay, it may discharge such residue and oily mixture as would remain for disposal if the bulk of the water had been separated from the mixture: Provided, such discharge is made as far as praticable from land." and "(c) a ship of twenty thousand tons gross tonnage or more, including a tanker, for which the building contract is placed on or after the effective date of this chapter."

Pub. L. 93–119 deleted second and third sentences which authorized discharge of oil or oily mixture outside the prohibited zones if in the opinion of the master special circumstances made it neither reasonable nor practicable to retain the oil or oily mixture and which required the reasons for the discharge to be reported in accordance with regulations prescribed by the Secretary.

§ 1003. Excepted discharges; securing safety of ship; prevention of damage to ship or cargo; saving life; damaged ship or unavoidable leakage.

Section 1002 of this title does not apply to—

(a) the discharge of oil or oily mixture from a ship for the purpose of securing the safety of a ship, preventing damage to a ship or cargo, or saving life at sea; or

(b) the escape of oil, or of oily mixture, resulting from damage to a ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape;

(c) Repealed. Pub. L. 93–119, § 2(3)(C), Oct. 4, 1973, 87 Stat. 425.

(As amended Pub. L. 93–119, § 2(3), Oct. 4, 1973, 87 Stat. 425.)

AMENDMENTS

1973—Pub. L. 93–119, § 2(3)(A), substituted in the introductory clause "does" for "shall".

Subsec. (b). Pub. L. 93–119, § 2(3)(B), substituted a period for the semicolon.

Subsec. (c) Pub. L. 93–119, § 2(3)(C), repealed subsec. (c) which had made provisions of section 1002 of this title inapplicable to the discharge of residue arising from the purification or clarification of fuel oil or lubricating oil, provided the discharge was made as far from land as practicable. See section 1002(c)(1)(ii), (2)(ii) of this title.

§ 1004. Excepted discharges; tanker ballast from cargo tank.

Section 1002 of this title does not apply to the discharge of tanker ballast from a cargo tank which since the cargo was last carried therein, has been so cleaned that any effluent therefrom, if it were discharged from a stationary tanker into clean calm water on a clear day, would produce no visible traces of oil on the surface of the water. (As amended Pub. L. 93–119, § 2(4), Oct. 4, 1973, 87 Stat. 425.)

AMENDMENTS

1973—Pub. L. 93–119 substituted "does not" for "shall not" and provisions which permitted discharge of tanker ballast from cargo tanker for former authorization of discharge from the bilges of a ship of an oily mixture containing no oil other than lubricating oil which had ned or leaked from machinery spaces.

§ 1004a. United States tankers; construction standards.

(a) Tank arrangement and tank size limitation pursuant to provisions of annex C to the convention; building contracts placed on or after effective date.

Every tanker to which this chapter applies and built in the United States and for which the building contract is placed on or after the effective date of this section shall be constructed in accordance with the provisions of annex C to the convention, relating to tank arrangement and limitation of tank size.

(b) Same; building contracts placed or keel laid before effective date.

Every tanker to which this chapter applies and built in the United States and for which the building contract the keel of which is laid or which is at a similar state of construction, before the effective date of this section, shall, within two years after that date, comply with the provisions of annex C of the convention if—

(1) the delivery of the tanker is after January 1, 1977; or

(2) the delivery of the tanker is not later than January 1, 1977, and the building contract is placed after January 1, 1972, or in cases where no building contract has previously been placed, the keel is laid or the tanker is at a similar stage of construction, after June 30, 1972.

(c) Domestic tankers without certificate of compliance or exemption prohibited from engaging in domestic or foreign trade.

A tanker required under this section to be constructed in accordance with annex C to the convention and so constructed shall carry on board a certificate issued by the Secretary attesting to that compliance. A tanker which is not required to be constructed in accordance with annex C to the convention shall carry on board a certificate to that effect issued by the Secretary, or if a tanker does comply with annex C though not required to do so, she may carry on board a certificate issued by the Secretary attesting to that compliance. Tankers under the flag of the United States are prohibited from engaging in domestic or foreign trade

without an appropriate certificate issued under this section.

(d) Foreign tankers with foreign registry but without certificate of compliance; consultation with foreign government; denial of access.

Certificates issued to foreign tankers pursuant to the convention by other nations party thereto shall be accepted by the Secretary as of the same force as certificates issued by him. If the Secretary has clear grounds for believing that a foreign tanker required under the convention to be constructed in accordance with annex C entering ports of the United States or using offshore terminals under United States control does not in fact comply with annex C, he may request the Secretary of State to seek consultation with the government with which the tanker is registered. If after consultation or otherwise, the Secretary is satisfied that such tanker does not comply with annex C, he may for this reason deny such tanker access to ports of the United States or to offshore terminals under United States control until such time as he is satisfied that the tanker has been brought into compliance.

(e) Foreign tankers without foreign registry; denial of access.

If the Secretary is satisfied that any other foreign tanker which, if registered in a country party to the convention, would be required to be constructed in accordance with annex C, does not in fact comply with the standards relating to tank arrangement and limitation of tank size of annex C, then he may deny such tanker access to ports of the United States or to offshore terminals under United States control. (Pub. L. 87–167, § 6, as added Pub. L. 93–119, § 2(5), Oct. 4, 1973, 87 Stat. 425.)

§ 1005. Penalties for violations.

(a) Criminal penalties for willful violations; separate violations.

Any person who willfully discharges oil or oily mixture from a ship in violation of this chapter or the regulations thereunder shall be fined not more than $10,000 for each violation or imprisoned not more than one year, or both.

(b) Civil penalties for willful or negligent and other violations; separate violations.

In addition to any other penalty prescribed by law any person who willfully or negligently discharges oil or oily mixture from a ship in violation of this chapter or any regulation thereunder shall be liable to a civil penalty of not more than $10,000 for each violation, and any person who otherwise violates this chapter or any regulation thereunder shall be liable to a civil penalty of not more than $5,000 for each violation.

(c) Liability of vessel; venue.

A ship from which oil or oily mixture is discharged in violation of this chapter or any regulation thereunder is liable for any pecuniary penalty under this section and may be proceeded against in the district court of any district in which the vessel may be found.

(d) Administrative proceedings: assessment of civil penalties; remission, mitigation, or compromise of any penalty; notice and hearing; judicial proceedings: civil actions by Attorney General for collection of penalties; trial de novo.

The Secretary may asses any civil penalty incurred under this chapter or any regulation thereunder and, in his discretion, remit, mitigate, or compromise any penalty. No penalty may be assessed unless the alleged violator shall have been given notice and the opportunity to be heard on the alleged violation. Upon any failure to pay a civil penalty assessed under this chapter, the Secretary may request the Attorney General to institute a civil action to collect the penalty. In hearing such action, the district court shall have authority to review the violation and the assessment of the civil penalty de novo. (Pub. L. 87–167, § 7, formerly § 6, Aug. 30, 1961, 75 Stat. 403, renumbered and amended Pub. L. 93–119, § 2(6), Oct. 4, 1973, 87 Stat. 426.)

AMENDMENTS

1973—Pub. L. 93–119, in revising the text, substituted provisions of subsecs. (a) to (d) for former provisions which made violations of this chapter misdemeanors punishable by a fine within the limits of $500 to $2,500 or imprisonment not exceeding one year, or both fine or imprisonment, for each offense, provided same monetary penalty for violations of a vessel, authorized the withholding of a vessel's clearance from a domestic port until payment of the penalty, and made the penalty a lien on the vessel recoverable by libel in rem in the federal district court wherein the ship may be.

§ 1006. Suspension or revocation of license of officers of offending vessels.

The Coast Guard may, subject to the provisions of section 239 of Title 46, suspend or revoke a license issued to the master or other licensed officer of any ship found violating the provisions of this chapter or the regulations issued pursuant thereto. (Pub. L. 87–167, § 9, Aug. 30, 1961, 75 Stat. 403.)

§ 1007. Personnel for enforcement of provisions; arrest of offenders and procedure; ship fittings and equipment.

(a) In the administration of sections 1001 to 1010 of this title, the Secretary may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel, facilities, or equipment of other Federal agencies or the States. For the better enforcement of the provisions of said sections, officers of the Coast Guard and other persons employed by or acting under the authority of the Secretary shall have power and authority and it shall be their duty to swear out process and to arrest and take into custody, with or without process, any person who may violate any of said provisions: *Provided,* That no person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials: *And provided further,* That whenever any arrest is made under the provisions of said sections the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect

thereto as authorized by law in cases of crimes against the United States. Representatives of the Secretary and of the Coast Guard of the United States may go on aboard and inspect any ship as may be necessary for enforcement of this chapter.

(b) To implement article VII of the convention, ship fittings and equipment, and operating requirements thereof, shall be in accordance with regulations prescribed by the Secretary. (Pub. L. 87–167, § 9, formerly § 8, Aug. 30, 1961, 75 Stat. 403, renumbered and amended Pub. L. 93–119, § 2 (8), Oct. 4, 1973, 87 Stat. 427.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–119, § 2(8)(A)–(C), substituted first sentence reading "In the administration of sections 1001 to 1010 of this title, the Secretary may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel, facilities, or equipment of other Federal agencies or the States." for "In the administration of sections 1001 to 1011 of this title, the Secretary may make use of the organization, equipment, and agencies, including engineering, clerical, and other personnel, employed under his direction in the improvement of rivers and harbors and in the enforcement of laws for the preservation and protection of navigable waters."; substituted in second sentence following "For the better enforcement of the provisions of said sections," text reading "officers of the Coast Guard and other persons employed by or acting under the authority of the Secretary" for "the officers and agents of the United States in charge of river and harbor improvements and persons employed under them by authority of the Secretary, and officers and employees of the Bureau of Customs and the Coast Guard"; and substituted in last sentence "Representatives of the Secretary and of the Coast Guard of the United States may go on board and inspect any ship as may be necessary" for "Representatives of the Secretary and of the Bureau of Customs and Coast Guard of the United States may go on board and inspect any ship in a prohibited zone or in a port of the United States as may be necessary".

Subsec. (b). Pub. L. 93–119, § 2(8)(D), deleted after "Secretary" the words "of the Department in which the Coast Guard is operating" and provision for a civil penalty not in excess of $100, in addition to any other penalty prescribed by law, for violation of regulations. See section 1005 of this title.

§ 1008. Oil record book.

(a) Printing; regulations by Secretary.

The Secretary shall have printed separate oil record books, containing instructions and spaces for inserting information in the form prescribed by the Convention, which shall be published in regulations prescribed by the Secretary.

(b) Book supplied without charge; inspection and surrender.

If subject to this chapter, every ship using oil fuel and every tanker shall be provided, without charge, an oil record book which shall be carried on board. The provisions of section 140 of Title 5 shall not apply. The ownership of the booklet shall remain in the United States Government. This book shall be available for inspection as provided in this chapter and for surrender to the United States Government pursuant to regulations of the Secretary.

(c) Operations requiring recordation.

The oil record book shall be completed on each occasion, on a tank-to-tank basis, whenever any of the following operations take place in the ship:

(1) for tankers—

(i) loading of oil cargo;

(ii) transfer of oil cargo during voyage;

(iii) discharge of oil cargo;

(iv) ballasting of cargo tanks;

(v) cleaning of cargo tanks;

(vi) discharge of dirty ballast;

(vii) discharge of water from slop tanks;

(viii) disposal of residues;

(ix) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate logbook;

(2) for ships other than tankers—

(i) ballasting or cleaning of bunker fuel tanks;

(ii) discharge of dirty ballast or cleaning water from bunker fuel tanks;

(iii) disposal of residues;

(iv) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate logbook. In the event of such discharge or escape of oil or oily mixture as is referred to in section 1003 of this title, a statement shall be made in the oil record book of the circumstances of, and reason for, the discharge or escape.

(d) Entries; signatures.

Each operation described in subsection (c) of this section shall be fully recorded without delay in the oil record book so that all the entries in the book appropriate to that operation are completed. Each page of the book shall be signed by the officer or officers in charge of the operations concerned and, when the ship is manned, by the master of the ship.

(e) Rules and regulations.

Oil record books shall be kept in such manner and for such length of time as set forth in the regulations prescribed by the Secretary.

(f) Repealed. Pub. L. 93–119, § 2(9)(C), Oct. 4, 1973, 87 Stat. 428.

(Pub. L. 87–167, § 10, formerly § 9, Aug. 30, 1961, 75 Stat. 404, amended Pub. L. 89–551, § 1(6), Sept. 1, 1966, 80 Stat. 374; renumbered and amended Pub. L. 93–119, § 2(9), Oct. 4, 1973, 87 Stat. 427.)

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–119, § 2(9)(A), inserted in introductory text ", on a tank-to-tank basis,"; in revising first sentence, substituted cls. (1) for tankers and (2) for ships other than tankers for prior cls. (1) to (7), adding items (i)–(iii) and (ix) of cl. (1), incorporating in: item (iv) provisions of former cl. (1) relating to ballasting of and discharge of ballast from cargo tanks of tankers; item (v) provisions of former cl. (2) relating to cleaning of cargo tank of tankers; item (vi) provisions of former cl. (1), substituting "dirty ballast" for "ballast"; item (vii) provisions of former cl. (3) relating to settling in slop tanks and discharge of water from tankers; item (viii) provisions of former cl. (4) relating to disposal from tankers during voyage, of bunker fuel tanks of ships other

than tankers of oily residues from slop tanks or other sources; adding item (iv) of cl. (2), incorporating in: items (i) and (ii) provisions of former cl. (5) relating to ballasting, or cleaning during voyage of bunker fuel tanks of ships other than tankers; item (iii) provisions of former cl. (6) relating to disposal from ships other than tankers of oily residues from bunker fuel tanks or other sources; and deleting former cl. (7) relating to accidental or other exceptional discharges or escapes of oil from tankers or ships other than tankers; and deleted from last sentence reference to section 1002(c) of this title.

Subsec. (f). Pub. L. 93–119, § 2(9)(C), repealed subsec. (f) which provided for fines within limits of $500 to $1,000 for noncompliance with oil record books requirements and for such fines or imprisonment for term not exceeding six months, or both, for false or misleading entries in any material particular.

§ 1009. Regulations.

The Secretary may make regulations for the administration of sections 1002, 1003, 1004, 1004a, 1005, 1007, and 1008 of this title. (Pub. L. 87–167, § 11, formerly § 10, Aug. 30, 1961, 75 Stat. 404, amended Pub. L. 89–551, § 1(7), Sept. 1, 1966, 80 Stat. 375; renumbered and amended Pub. L. 93–119, § 2(10), Oct. 4, 1973, 87 Stat. 428.)

AMENDMENTS

1973—Pub. L. 93–119 included references to sections 1004a and 1005, substituted reference to section 1007 for reference to section 1007(a), and deleted reference to section 1011 of this title.

§ 1010. Boarding of ships; production of records; evidence of violations by foreign ships.

(a) The Secretary may make regulations empowering such persons as may be designated to go on board any ship to which the convention applies, while the ship is within the territorial jurisdiction of the United States, and to require production of any records required to be kept in accordance with the convention.

(b) Should evidence be obtained that a ship registered in another country party to the convention has discharged oil in violation of the convention but outside the territorial sea of the United States, such evidence should be forwarded to the State Department for action in accordance with article X of the convention. (Pub. L. 87–167, § 12, formerly § 11, Aug. 30, 1961, 75 Stat. 404; renumbered and amended Pub. L. 93–119, § 2(11), Oct. 4, 1973, 87 Stat. 428.)

AMENDMENTS

1973—Subsec. (b). Pub. L. 93–119 substituted "in violation of the convention but outside the territorial sea of the United States" for "in any prohibited zone".

§ 1011. Repealed. Pub. L. 93–119, § 2(12), Oct. 4, 1973, 87 Stat. 428.

Section, Pub. L. 87–167, § 12, Aug. 30, 1961, 75 Stat. 404; Pub. L. 89–551, § 1(8), Sept. 1, 1966, 90 Stat. 375, described the prohibited zones and provided for publication of reduction or extension of zones.

§ 1012. Repealed. Pub. L. 89–551, § 1(9), Sept. 1, 1966, 80 Stat. 375.

Section, Pub. L. 87–167, § 13, Aug. 30, 1961, 75 Stat. 405, set out the form and required entries for the oil record book. See section 1008 of this title.

§ 1013. Appropriations.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. (Pub. L. 87–167, § 14, Aug. 30, 1961, 75 Stat. 407.)

§ 1014. Effect on other laws.

Nothing in this chapter or in regulations issued hereunder shall be construed to modify or amend the provisions of section 1321 of this title, or section 89 of Title 14. (Pub. L. 87–167, § 15, formerly § 16, Aug. 30 1961, 75 Stat. 407; renumbered and amended Pub. L. 93–119, § 2(14), Oct. 4, 1973, 87 Stat. 428.)

AMENDMENTS

1973—Pub. L. 93–119 substituted "provisions of section 1321 of this title" for "provisions of the Oil Pollution Act, 1924,".

§ 1015. Repealed. Pub. L. 93–119, § 2(15), Oct. 4, 1973, 87 Stat. 428.

Section, Pub. L. 87–167, § 17, Aug. 30, 1961, 75 Stat. 407; Pub. L. 89–551, § 1(10), Sept. 1, 1966, 80 Stat. 375, provided for effective date of Pub. L. 87–167, classified to this chapter and savings provision. Subject matter is now covered by section 1016 of this title.

§ 1016. Effective date of 1973 Amendments.

(a) General provision.

Except as provided in subsection (c) of this section, this amending Act is effective upon the date of its enactment or upon the date amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, adopted by the Assembly of the Inter-Governmental Maritime Consultative Organization on October 21, 1969, October 12, 1971, and October 15, 1971, are ratified or accepted with the advice and consent of the Senate of the United States, whichever is the later date.

(b) Savings provision.

Any rights or liabilities existing on the effective date of this Act shall not be affected by the enactment of this Act. Any regulations or procedures promulgated or effected pursuant to this chapter, as previously amended, remain in effect until modified or superseded under the authority of this chapter, as amended by this Act. Any reference to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, in any law or regulation shall be deemed to be a reference to the convention as revised or amended by the latest amendments in respect of which the United States has deposited an instrument of ratification or acceptance.

(c) Special provision.

Notwithstanding the foregoing provisions of this section, subsections (d) and (e) of section 1004a of this title, shall be effective upon the date of their enactment or upon the date the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended by the amendments adopted by the Assembly of the Inter-Governmental Marine Consultative Organization on October 15, 1971, enters into force pursuant to article XVI of that convention, as amended, whichever is later; and no authority shall be exercised pursuant to article VI bis (3) and (4) of such amendments prior to the effective date of such subsections. (Pub. L. 93–119, § 3, Oct. 4, 1973, 87 Stat. 428.)

19. Reefs for Marine Life Conservation

16 U.S.C. 1220–1220c

(See Reefs for Marine Life Conservation under title V *Fish Resources Preservation*)

20. Regulation of Sponge Industry

16 U.S.C. 781 et seq.

(See Regulation of Sponge Industry under title V *Fish Resources Preservation*)

21. Sockeye Salmon or Pink Salmon Fishing Act of 1947

16 U.S.C. 776–776f

(See Sockeye or Pink Salmon Fishing Act under title V *Fish Resources, Preservation*)

22. Tuna Conventions Act of 1950

16 U.S.C. 951–961

(See Tuna Conventions Act of 1950 under title V *Fish Resources, Preservation*)

23. Waste Materials Tonnage for Shipping

46 U.S.C. 77

(See Waste Materials Tonnage for Shipping under title XI *Water Pollution*)

24. Whaling Convention Act of 1949

16 U.S.C. 916 et seq.

(See Whaling Convention Act of 1949 under title V *Fish Resources, Preservation*)

TITLE IX—POLLUTION CONTROL—FINANCING

1. Agricultural Credit for Pollution Control

7 U.S.C. 1921–1926, 1932

Sec.

§ 1921. Congressional findings.

The Congress finds that the statutory authority of the Secretary of Agriculture, hereinafter referred to in this chapter as the "Secretary," for making and insuring loans to farmers and ranchers should be revised and consolidated to provide for more effective credit services to farmers. (Pub. L. 87–128, title III, § 301(b), Aug. 8, 1961, 75 Stat. 307.)

§ 1922. Persons eligible for loans.

The Secretary is authorized to make and insure loans under this subchapter to farmers and ranchers in the United States and in Puerto Rico and the Virgin Islands who (1) are citizens of the United States, (2) have a farm background, except with respect to veterans as defined in section 1983(e) of this title, a farm background shall not be required as a condition precedent to obtaining any loan, and either training or farming experience which the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations, (3) are or will become owner-operators of not larger than family farms, and (4) are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. (Pub. L. 87–128, title III, § 302, Aug. 8, 1961, 75 Stat. 307; Pub. L. 91–620, § 2, Dec. 31, 1970, 84 Stat. 1862.)

AMENDMENTS

1970—Pub. L. 91–620 provided that with respect to veterans as defined in section 1983(e) of this title, a farm background shall not be required as a condition precedent to obtaining any loan.

§ 1923. Purposes of loans; preferences.

Loans may be made or insured under this subchapter for (1) acquiring, enlarging, or improving farms, including farm buildings, land and water development, use and conservation, (2) recreational uses and facilities, (3) enterprises needed to supplement farm income, (4) refinancing existing indebtedness, and (5) loan closing costs. In making or insuring loans for farm purchase, the Secretary shall give preference to persons who are married or have dependent families and, wherever practicable, to persons who are able to make initial downpayments, or who are owners of livestock and farm implements necessary successfully to carry on farming operations. (Pub. L. 87–128, title III, § 303, Aug. 8, 1961, 75 Stat. 307; Pub. L. 87–703, title IV, § 401(1), Sept. 27, 1962, 76 Stat. 631; Pub. L. 90–488, § 1, Aug. 15, 1968, 82 Stat. 770.)

AMENDMENTS

1968—Pub. L. 90–488 designated existing provisions as cls. (1), (2), (4), (5), and added cl. (3).

1962—Pub L. 87–703 authorized loans to be made or insured for recreational uses and facilities.

§ 1924. Soil and water conservation, recreational facilities and uses, and rural enterprise loans.

(a) Loans may also be made or insured under this subchapter to any farmowners or tenants without regard to the requirements of section 1922 (1), (2), and (3) of this title for the purposes only of land and water development, use and conservation, not including recreational uses and facilities, and without regard to the requirements of section 1922 (2) and (3) of this title, to individual farmowners or tenants to finance outdoor recreational enterprises or to convert to recreational uses their farming or ranching operations, including those heretofore financed under this chapter.

(b) Loans may also be made or insured under this subchapter to residents of rural areas without regard to the requirements of clauses (2) and (3) of section 1922 of this title to acquire or establish in rural areas small business enterprises to provide

such residents with essential income. (As amended Pub. L. 92-419, title I, § 102, Aug. 30, 1972, 86 Stat. 657.)

AMENDMENTS

1972—Pub. L. 92-419 designated existing provisions as subsec. (a) and struck out items (a) and (b) designations therein appearing before "to any farmowner" and "without regard to", respectively; and added subsec. (b).

§ 1925. Limitation on amount of loan.

The Secretary shall make or insure no loan under sections 1922, 1923, and 1924 of this title which would cause (a) the unpaid indebtedness against the farm or other security at the time the loan is made to exceed $225,000 or the value of the farm or other security, (b) the loans under such sections to any one borrower to exceed $100,000, or (c) the loan to exceed the amount certified by the county committee. In determining the value of the farm, the Secretary shall consider appraisals made by competent appraisers under rules established by the Secretary. (As amended Pub. L. 92-419, title I, § 103, Aug. 30, 1972, 86 Stat. 658; Pub. L. 91-524, title VIII, § 807, as added Pub. L. 93-86, § 1(27)(B), Aug. 10, 1973, 87 Stat. 237.)

AMENDMENTS

1973—Pub. L. 91-524, § 807, as added by Pub. L. 93-86 substituted "$225,000" for "$100,000" in cl. (a), added cl. (b), and redesignated former cl. (b) as (c).

1972—Pub. L. 92-419 struck out "normal" from phrase "normal value" in first and second sentences, and last sentence reading "Such appraisals shall take into consideration both the normal agricultural value and the normal market value of the farm."

§ 1926. Water and waste facility loans and grants.

(a) Criteria; definitions; limitation on allowable users of Federal funds; inclusion of interest or other income in gross income on sale of insured loan.

(1) The Secretary is also authorized to make or insure loans to associations, including corporations not operated for profit, Indian tribes on Federal and State reservations and other federally recognized Indian tribes, and public and quasi-public agencies to provide for the application or establishment of soil conservation practices, shifts in land use, the conservation, development, use, and control of water, and the installation or improvement of drainage or waste disposal facilities, recreational developments, and essential community facilities including necessary related equipment, all primarily serving farmers, ranchers, farm tenants, farm laborers, and other rural residents, and to furnish financial assistance or other aid in planning projects for such purposes. When any loan made for a purpose specified in this paragraph is sold out of the Agricultural Credit Insurance Fund as an insured loan, the interest or other income thereon paid to an insured holder shall be included in gross income for purposes of chapter 1 of Title 26.

(2) The Secretary is authorized to make grants aggregating not to exceed $300,000,000 in any fiscal year to such associations to finance specific projects for works for the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas. The amount of any grant made under the authority of this paragraph shall not exceed 50 per centum of the development cost of the project to serve the area which the association determines can be feasibly served by the facility and to adequately serve the reasonably foreseeable growth needs of the area.

(3) No grant shall be made under paragraph (2) of this subsection in connection with any project unless the Secretary determines that the project (i) will serve a rural area which, if such project is carried out, is not likely to decline in population below that for which the project was designed, (ii) is designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area, and (iii) is necessary for an orderly community development consistent with a comprehensive community water, waste disposal, or other development plan of the rural area and not inconsistent with any planned development provided in any State, multijurisdictional, county, or municipal plan approved by competent authority for the area in which the rural community is located, and the Secretary shall require the submission of all applications for financial assistance under this section to the multijurisdictional substate areawide general purpose planning and development agency that has been officially designated as a clearinghouse agency under Office of Management and Budget Circular A-95 and to the county or municipal government having jurisdiction over the area in which the proposed project is to be located for review and comment within a designated period of time not to exceed 30 days concerning among other considerations, the effect of the project upon the areawide goals and plans of such agency or government. No loan under this section shall be made that is inconsistent with any multijurisdictional planning and development district areawide plan of such agency. The Secretary is authorized to reimburse such agency or government for the cost of making the required review. Until October 1, 1973, the Secretary may make grants prior to the completion of the comprehensive plan, if the preparation of such plan has been undertaken for the area.

(4)(A) The term "development cost" means the cost of construction of a facility and the land, easements, and rights-of-way, and water rights necessary to the construction and operation of the facility.

(B) The term "project" shall include facilities providing central service or facilities serving individual properties, or both.

(5) Repealed. Pub. L. 92-419, title I, § 110, Aug. 30, 1972, 86 Stat. 659.

(6) The Secretary may make grants aggregating not to exceed $30,000,000 in any fiscal year to public bodies or such other agencies as the Secretary may determine having authority to prepare comprehensive plans for the development of water or waste disposal systems in rural areas which do not have funds available for immediate undertaking of the preparation of such plan.

(7) As used in this chapter, the terms "rural" and "rural area" shall not include any area in any city or town which has a population in excess of ten thousand inhabitants, except that for purposes of

loans and grants for private business enterprises under sections 1924(b), 1932 and 1942 (b), (c), and (d) of this title the terms "rural" and "rural area" may include all territory of a State, the Commonwealth of Puerto Rico and the Virgin Islands, that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than one hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States: *Provided,* That special consideration for such loans and grants shall be given to areas other than cities having a population of more than twenty-five thousand.

(8) In each instance where the Secretary receives two or more applications for financial assistance for projects that would serve substantially the same group of residents within a single rural area, and one such application is submitted by a city, town, county or other unit of general local government, he shall, in the absence of substantial reasons to the contrary, provide such assistance to such city, town, county or other unit of general local government.

(9) No Federal funds shall be authorized for use unless it be certified by the appropriate State water pollution control agency that the water supply system authorized will not result in pollution of waters of the State in excess of standards established by that agency.

(10) In the case of sewers and waste disposal system, no Federal funds shall be advanced hereunder unless the appropriate State water pollution control agency shall certify that the effluent therefrom shall conform with appropriate State and Federal water pollution control standards when and where established.

(11) The Secretary may make grants, not to exceed $10,000,000 annually, to public bodies or such other agencies as he may select to prepare comprehensive plans for rural development or such aspects of rural development as he may specify.

(12) In the making of loans and grants for community waste disposal and water facilities under paragraphs (1) and (2) of this subsection the Secretary shall accord highest priority to the application of any municipality or other public agency (including an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group) in a rural community having a population not in excess of five thousand five hundred and which, in the case of water facility loans, has a community water supply system, where the Secretary determines that due to unanticipated diminution or deterioration of its water supply, immediate action is needed, or in the case of waste disposal, has a community waste disposal system, where the Secretary determines that due to unanticipated occurrences the system is not adequate to the needs of the community. The Secretary shall utilize the Soil Conservation Service in rendering technical assistance to applicants under this paragraph to the extent he deems appropriate.

(13) (A) The Secretary, under such reasonable rules and conditions as he shall establish, shall make grants to eligible volunteer fire departments for up to 50 per centum of the cost of firefighting equipment needed by such departments but which such departments are unable to purchase through the resources otherwise available to them, and for the cost of the training necessary to enable such departments to use such equipment efficiently.

(B) For the purposes of this subsection, the term "eligible volunteer fire department" means any established volunteer fire department in a rural town, village, or unincorporated area where the population is less than two thousand but greater than two hundred, as reasonably determined by the Secretary.

(b) Curtailment or limitation of service prohibited. The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

(c) Repealed. Pub. L. 91–606, title III, § 302(2), Dec. 31, 1970, 84 Stat. 1759.

(d) Carryover of unused authorizations for appropriations. Any amounts appropriated under this section shall remain available until expended, and any amounts authorized for any fiscal year under this section but not appropriated may be appropriated for any succeeding fiscal year. (Pub. L. 87–128, title III, § 306, Aug. 8, 1961, 75 Stat. 308; Pub. L. 87–703, title IV, § 401(2), Sept. 27, 1962, 76 Stat. 632; Pub. L. 89–240; § 1, Oct. 7, 1965, 79 Stat. 931; Pub. L. 90–488, §§ 3—5, Aug. 15, 1968, 82 Stat. 770; Pub. L. 91–524, title VIII, § 806(a), Nov. 30, 1970, 84 Stat. 1383; Pub. L. 91–606, title III, § 302(2), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 91–617, § 1(a), Dec. 31, 1970, 84 Stat. 1855.)

(As amended Pub. L. 92–419, title I, §§ 104–112, Aug. 30, 1972, 86 Stat. 658, 659; Pub. L. 93–86, § 1(27)(B), Aug. 10, 1973, 87 Stat. 240.)

AMENDMENTS

1973—Subsec. (a)(13). Pub. L. 91–524, § 816(c), as added by Pub. L. 93–86 added subsec. (a)(13).

1972—Subsec. (a)(1). Pub. L. 92–419, § 104(1), (2), authorized loans to Indian tribes on Federal and State reservations and other federally recognized Indian tribes and included as an allowable use provision for essential community facilities including necessary related equipment, respectively.

Subsec. (a)(2). Pub. L. 92–419, § 105, substituted "$300,000,000" for "$100,000,000".

Subsec. (a)(3). Pub. L. 92–419, §§ 106, 107, substituted "project" for "facility" where first appearing; in item (i), substituted "project" for "facility" and inserted in such text ", if such project is carried out,"; in item (ii), substituted "will or can be" for "will be or can be"; substituted "and (iii)" for "or (iii)" and in such item (iii), substituted "an orderly community development con-

sistent with a comprehensive community water, waste disposal, or other development plan" and "development provided in any State, multijurisdictional, county, or municipal plan approved by competent authority" for "orderly community development consistent with a comprehensive community water or sewer development plan" and "development under State, county, or municipal plans approved as official plans by competent authority", substituted "Secretary shall require the submission of all applications for financial assistance under this section to the multijurisdictional substate areawide general purpose planning and development agency that has been officially designated as a clearinghouse agency under Office of Management and Budget Circular A-95 and to the county or municipal government having jurisdiction over the area in which the proposed project is to be located for review and comment within a designated period of time not to exceed 30 days concerning among other considerations, the effect of the project upon the areawide goals and plans of such agency or government" for "Secretary shall establish regulations requiring the submission of all applications for financial assistance under this chapter to the county or municipal government in which the proposed project is to be located for review and comment by such agency within a designated period of time"; prohibited loans inconsistent with multijurisdictional planning and development district areawide plan of the agency; authorized agency or government reimbursement for cost of making the review; and extended authority for making grants prior to completion of the comprehensive plan from Oct. 1, 1971, to Oct. 1, 1973.

Subsec. (a)(5). Pub. L. 92-419, § 110, struck out provisions of par. (5) which prohibited any loan or grant under subsec. (a) of this section which would cause the unpaid principal indebtedness of any association under this chapter and Act Aug. 28, 1937, as amended (superseded by this chapter), together with amount of any assistance in the form of a grant to exceed $4,000,000 at any one time.

Subsec. (a)(6). Pub. L. 92-419, § 108, substituted "$30,000,000" for "$15,000,000", struck out "official" preceding "comprehensive plans", and substituted "waste disposal systems" for "sewer systems".

Subsec. (a)(7). Pub. L. 92-419, § 109, substituted definition of "rural" and "rural area" as excluding an area in a city or town with a population in excess of ten thousand inhabitants for prior provision for rural areas for purposes of water and waste disposal projects excluding an area in a city or town with a population in excess of 5,500 inhabitants, provided exception provision and special consideration for loans and grants to areas other than cities having a population of more than twenty-five thousand.

Subsec. (a)(11), (12). Pub. L. 92-419, §§ 111, 112, added pars. (11) and (12).

* * * * *

§ 1932. Rural industrialization assistance.

(a) Loans for private business enterprises and pollution abatement and control projects; loan guarantees.

The Secretary may also make and insure loans to public, private, or cooperative organizations organized for profit or nonprofit, to Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups, or to individuals for the purpose of improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural communities, including pollution abatement and control. Such loans, when originated, held, and serviced by other lenders, may be guaranteed by the Secretary under this section without regard to subsections (a) and (c) of section 1983 of this title.

(b) Grants for pollution abatement and control projects; limitations.

The Secretary may make grants, not to exceed $50,000,000 annually, to eligible applicants under this section or pollution abatement and control projects in rural areas. No such grant shall exceed 50 per centum of the development cost of such a project.

(c) Grants for private business enterprises; limitation.

The Secretary may also make grants, not to exceed $50,000,000 annually, to public bodies for measures designed to facilitate development of private business enterprises, including the development, construction or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refinancing, services and fees.

(d) Joint loans or grants for private business enterprises; restrictions; system of certification for expeditious processing of requests for assistance.

The Secretary may participate in joint financing to facilitate development of private business enterprises in rural areas with the Economic Development Administration, the Small Business Administration, and the Department of Housing and Urban Development and other Federal and State agencies and with private and quasi-public financial institutions, through joint loans to applicants eligible under subsection (a) of this section for the purpose of improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural areas or through joint grants to applicants eligible under subsection (c) of this section for such purposes, including in the case of loans or grants the development, construction, or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refining, service and fees.

(1) No financial or other assistance shall be extended under any provision of sections 1924(b), 1932, and 1942(b) of this title that is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant, but this limitation shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(2) No financial or other assistance shall be extended under any provision of sections 1924(b), 1932, and 1942(b) of this title which is calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, com-

modities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(3) No financial or other assistance shall be extended under any provision of sections 1924(b), 1932, and 1942(b) of this title if the Secretary of Labor certifies within 60 days after the matter has been submitted to him by the Secretary of Agriculture that the provisions of paragraphs (1) and (2) of this subsection have not been complied with. The Secretary of Labor shall, in cooperation with the Secretary of Agriculture, develop a system of certification which will insure the expeditious processing of requests for assistance under this section.

(4) No grant or loan authorized to be made under this chapter shall require or be subject to the prior approval of any officer, employee, or agency of any State.

(5) No loan commitment issued under this section, section 1924 of this title or section 1942 of this title shall be conditioned upon the applicant investing in excess of 10 per centum in the business or industrial enterprise for which purpose the loan is to be made unless the Secretary determines there are special circumstances which necessitate an equity investment by the applicant greater than 10 per centum.

(6) No provision of law shall prohibit issuance by the Secretary of certificates evidencing beneficial ownership in a block of notes insured or guaranteed under this chapter or Title V of the Housing Act of 1949; any sale by the Secretary of such certificates shall be treated as a sale of assets for the purposes of the Budget and Accounting Act of 1921. Any security representing beneficial ownership in a block of notes guaranteed or insured under this chapter or Title V of the Housing Act of 1949 issued by a private entity shall be exempt from laws administered by the Securities and Exchange Commission, except sections 77q, 77v and 77x of Title 15; however, the Secretary shall require (i) that the issuer place such notes in the custody of an institution chartered by a Federal or State agency to act as trustee and (ii) that the issuer provide such periodic reports of sales as the Secretary deems necessary. (Pub. L. 87–123, title III, § 310 B, as added Pub. L. 92–419, title I, § 118(a), Aug. 30, 1972, 86 Stat. 663, and amended Pub. L. 91–524, title VIII, § 817, as added Pub. L. 93–86, § 1(27) (B), Aug. 10, 1973, 87 Stat. 241.)

AMENDMENTS

1973—Subsec. (d)(4)–(6). Pub. L. 91–524, § 817, as added by Pub. L. 93–86 added subsec. (d)(4)–(6).

2. Basic Water and Sewer Facilities

42 U.S.C. 3101–3108

Sec.

§ 3101. Congressional declaration of purpose.

The purpose of this chapter is to assist and encourage the communities of the Nation fully to meet the needs of their citizens by making it possible, with Federal grant assistance, for their governmental bodies (1) to construct adequate basic water and sewer facilities needed to promote the efficient and orderly growth and development of our communities, (2) to construct neighborhood facilities needed to enable them to carry on programs of necessary social services, and (3) to acquire, in a planned and orderly fashion, land to be utilized in the future for public purposes. (Pub. L. 89–117, title VII, § 701, Aug. 10, 1965, 79 Stat. 489; Pub. L. 90–448, title VI, § 603(a), Aug. 1, 1968, 82 Stat. 533.)

AMENDMENTS

1968—Pub. L. 90–448, substituted "in the future for public purposes" for "in connection with the future construction of public works and facilities in cl. (3).

§ 3102. Grants for basic water and sewer facilities.

(a) Authority to make grants for specific projects.

The Secretary of Housing and Urban Development (hereinafter in this chapter referred to as the "Secretary") is authorized to make grants to local public bodies and agencies to finance specific projects for basic public water facilities (including works for the storage, treatment, purification, and dis-

tribution of water), and for basic public sewer facilities (other than "treatment works" as defined in the Federal Water Pollution Control Act): *Provided,* That no grant shall be made under this section for any sewer facilities unless the Administrator of the Environmental Protection Agency certifies to the Secretary that any waste material carried by such facilities will be adequately treated before it is discharged into any public waterway so as to meet applicable Federal, State, interstate, or local water quality standards.

(b) Maximum amount of grants.

The amount of any grant made under the authority of this section shall not exceed 50 per centum of the development cost of the project: *Provided,* That in the case of a community having a population of less than ten thousand, according to the most recent decennial census, which is situated within a metropolitan area, the Secretary may increase the amount of a grant for a basic public water or sewer facility assisted under this section to not more than 90 per centum of the development cost of such facility, if the community is unable to finance the construction of such facility without the increased grant authorized under this subsection, and if in such community (1) there does not exist a public or other adequate water or sewer facility which serves a substantial portion of the inhabitants of the community, and (2) the rate of unemployment is, and has been continuously for the preceding calendar year, 100 per centum above the national average: *And provided further,* That the limitations and restrictions contained in subsection (c) of this section shall not be applicable to any community applying for an increased grant under this subsection.

(c) Project requirements; need for facilities; growth needs of area; coordination of areawide development.

No grant shall be made under this section in connection with any project unless the Secretary determines that the project is necessary to provide adequate water or sewer facilities for, and will contribute to the improvement of the health or living standards of, the people in the community to be served, and that the project is (1) designed so that an adequate capacity will be available to serve the reasonably foreseeable growth needs of the area; (2) consistent with a program meeting criteria, established by the Secretary, for a unified or officially coordinated areawide water or sewer facilities system as part of the comprehensively planned development of the area, except that prior to June 30, 1974, grants may, in the discretion of the Secretary, be made under this section when such a program for an areawide water and sewer facilities system is under active preparation, although not yet completed, if the facility or facilities for which assistance is sought can reasonably be expected to be required as a part of such program, and there is urgent need for the facility or facilities; and (3) necessary to orderly community development.

(d) Job opportunities for unemployed or underemployed persons.

In the administration of this section the Secretary shall require that, to the greatest extent practicable, new job opportunities be provided for unemployed or underemployed persons in connection with projects the financing of which is assisted under this section.

(As amended Pub. L. 92–213, § 6, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–335, § 7, July 1, 1972, 86 Stat. 405; Pub. L. 93–117, § 9, Oct. 2, 1973, 87 Stat. 423.)

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–117 substituted "June 30, 1974" for "September 30, 1972."

1972—Subsec. (c). Pub. L. 92–335 substituted "September 30, 1972" for "June 30, 1972".

1971—Subsec. (c). Pub. L. 92–213 substituted "June 30, 1972" for "October 1, 1971".

§ 3103. Grants for neighborhood facilities.

(a) Authority to make grants for specific projects; qualifications of approved nonprofit organizations.

In accordance with the provisions of this section, the Secretary is authorized to make grants to any local public body or agency to assist in financing specific projects for neighborhood facilities. Any such project may be undertaken by such body or agency directly or through a nonprofit organization approved by it: *Provided,* That no grant shall be provided under this section for any project to be undertaken through a nonprofit organization unless the Secretary determines (1) that such organization has or will have the legal, financial, and technical capacity to carry out the project, and (2) that the public body or agency to which the grant is made will have satisfactory continuing control over the use of the proposed facilities.

(b) Maximum amount of grants.

The amount of any grant made under the authority of this section shall not exceed 66⅔ per centum of the development cost of the project for which the grant is made (or 75 per centum of such cost in the case of a project located in an area which at the time the grant is made is designated as a redevelopment area under the Area Redevelopment Act or any Act supplementary thereto).

(c) Project requirements; need for facilities; comprehensive planning; accessibility to low- or moderate-income residents.

No grant shall be made under this section for any project unless the Secretary determines that the project will provide a neighborhood facility which is (1) necessary for carrying out a program of health, recreational, social, or similar community service (including a community action program approved under subchapter II of chapter 34 of this title) in the area, (2) consistent with comprehensive planning for the development of the community, and (3) so located as to be available for use by a significant portion (or number in the case of large urban places) of the area's low- or moderate-income residents.

(d) Conversion of facility to other uses.

For a period of twenty years after a grant has been

made under this section for a neighborhood facility, such facility shall not, without the approval of the Secretary, be converted to uses other than those proposed by the applicant in its application for a grant. The Secretary shall not approve any conversion in the use of such a neighborhood facility during such twenty-year period unless he finds that such conversion is in accordance with the then applicable program of health, recreational, social, or similar community services in the area and consistent with comprehensive planning for the development of the community in which the facility is located. In approving any such conversion, the Secretary may impose such additional conditions and requirements as he deems necessary.

(e) Priority of projects designed primarily to benefit low-income families or further objectives of community action programs.

The Secretary shall give priority to applications for projects designed primarily to benefit members of low-income families or otherwise substantially further the objectives of a community action program approved under subchapter II of chapter 34 of this title. (Pub. L. 89–117, title VII, § 703, Aug. 10, 1965, 79 Stat. 491; Pub. L. 90–19, § 22(b), May 25, 1967, 81 Stat. 26.)

AMENDMENTS

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (c)—(e) of this section.

§ 3104. Advance acquisition of land for public purposes.

(a) Authority to make grants.

In order to encourage and assist the timely acquisition of land planned to be utilized in the future for public purposes, the Secretary is authorized to make grants to States and local public bodies and agencies to assist in financing the acquisition of a fee simple estate or other interest in such land.

(b) Maximum amount of grants.

The amount of any grant made under this section shall not exceed the aggregate amount of reasonable interest charges on the loans or other financial obligations incurred to finance the acquisition of such land for a period not in excess of the lesser of (1) five years from the date of acquisition of such land or (2) the period of time between the date on which the land was acquired and the date its use began for the purpose for which it was acquired: *Provided,* That where all or any portion of the cost of such land is not financed through borrowings, the amount of the grant shall be computed on the basis of the aggregate amount of reasonable interest charges that the Secretary determines would have been required.

(c) Utilization of land for public purpose within reasonable period of time.

No grant shall be made under this section unless the Secretary determines that the land will be utilized for a public purpose within a reasonable period of time and that such utilization will contribute to economy, efficiency, and the comprehensively planned development of the area. The Secretary shall in all cases require that land acquired with the assistance of a grant under this section be utilized for a public purpose within five years after the date on which a contract to make such grant is entered into, unless the Secretary (1) determines that due to unusual circumstances a longer period of time is necessary and in the public interest, and (2) reports such determination promptly to the Committees on Banking and Currency of the Senate and House of Representatives.

(d) Diversion of land; repayment; interim use.

No land acquired with assistance under this section shall, without approval of the Secretary, be diverted from the purpose originally approved. The Secretary shall approve no such diversion unless he finds that the diversion is in accord with the then applicable comprehensive plan for the area. In cases of a diversion of land to other than a public purpose, the Secretary may require repayment of the grant, or substitution of land of approximately equal fair market value, whichever he deems appropriate. An interim use of the land for a public or private purpose in accordance with standards prescribed by the Secretary, or approved by him, shall not constitute a diversion within the meaning of this subsection.

(e) Eligibility for other Federal loans or grant programs.

Notwithstanding any other provision of law, no project for which land is acquired with assistance under this section shall, solely as a result of such advance acquisition, be considered ineligible for the purpose of any other Federal loan or grant program, and the amount of the purchase price paid for the land by the recipient of a grant under this section may be considered an eligible cost for the purpose of such other Federal loan or grant program. (Pub. L. 89–117, title VII, § 704, Aug. 10, 1965, 79 Stat. 491; Pub. L. 90–19, § 22(b), May 25, 1967, 81 Stat. 26; Pub. L. 90–448, title VI, § 603(b), Aug. 1, 1968, 82 Stat. 533.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–448 substituted "to be utilized in the future for public purposes" for "to be utilized in connection with the future construction of public works or facilities."

Subsec. (b). Pub. L. 90–448 changed the period from not more than the lesser of (1) five years from the date such loan was made or such financial obligation was incurred, or (2) the period of time between the date such loan was made or such financial obligation was incurred and the date construction is begun on the public work or facility, to not more than the lesser of (1) five years from the date of acquisition of such land, or (2) the period of time between the date on which the land was acquired and the date its use began for the purpose for which it was acquired, and inserted proviso requiring the amount of the grant, where all or any portion of the cost of land is not financed through borrowings, to be computed on the basis of the aggregate amount of reasonable interest charges that the Secretary determines would have been required

Subsec. (c). Pub. L. 90–448 substituted provisions requiring the Secretary to determine that the land will be utilized for a public purpose within a reasonable period of time, for provisions which required a determination that the public work or facility for which the land is to be utilized is planned to be constructed or initiated within a reasonable period of time, empowered the Secretary to extend the time if he determines that due to unusual circumstances a longer period of time is necessary and in the public interest, and required a prompt report of such determination to Congressional Committees

Subsec. (d). Pub. L. 90–448 inserted provisions prohibiting diversion of land without approval of the Sec-

retary, directing the Secretary to disapprove any diversion unless he finds that the diversion is in accord with the then applicable comprehensive plan for the area, authorizing the Secretary to accept, in cases of repayment, substitution of land of approximately equal fair market value, and stating that an interim use of land for a public or private purpose in accordance with prescribed standards shall not constitute a diversion, and eliminated provisions which required repayment if the land purchased with assistance is not utilized within five years after the agreement is entered into in connection with the construction of the public work or facility for which the land was acquired.

Subsec. (e). Pub. L. 90–448 added subsec. (e).

1967—Pub. L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a), (c), and (d) of this section.

§ 3105. Powers and duties of Secretary.

(a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter, the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 1749a of Title 12, except subsections (a), (c)(2), and (f) thereof.

(b) The Secretary is authorized, notwithstanding the provisions of section 529 of Title 31, to make advance or progress payments on account of any grant made pursuant to this chapter. No part of any grant authorized to be made by the provisions of this chapter shall be used for the payment of ordinary governmental operating expenses. (Pub. L. 89–117, title VII, § 705, Aug. 10, 1965, 79 Stat. 492; Pub. L. 90–19, § 22(b), May 25, 1967, 81 Stat. 26.)

AMENDMENTS

1967—Pub. L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

§ 3106. Definitions.

As used in this chapter—

(a) The term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) The term "local public bodies and agencies" includes public corporate bodies or political subdivisions; public agencies or instrumentalities of one or more States, municipalities, or political subdivisions of one or more States (including public agencies and instrumentalities of one or more municipalities or other political subdivisions of one or more States); Indian tribes; and boards or commissions established under the laws of any State to finance specific capital improvement projects.

(c) The term "development cost" means the cost of constructing the facility and of acquiring the land on which it is located, including necessary site improvements to permit its use as a site for the facility.

(Pub. L. 89–117, title VII, § 706, Aug. 10, 1965, 79 Stat. 492.)

§ 3107. Labor standards.

All laborers and mechanics employed by contractors or subcontractors on projects assisted under sections 3102 and 3103 of this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. No such project shall be approved without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 276c of Title 40. (Pub. L. 89–117, title VII, § 707, Aug. 10, 1965, 79 Stat. 492.)

§ 3108. Authorization of appropriations.

(a) There are authorized to be appropriated for each fiscal year commencing after June 30, 1965, and ending prior to July 1, 1969, not to exceed (1) $200,000,000 (or $350,000,000 in the case of the fiscal year commencing July 1, 1968) for grants under section 3102 of this title, (2) $50,000,000 for grants under section 3103 of this title, and (3) $25,000,000 for grants under section 3104 of this title. In addition, there is authorized to be appropriated for grants under section 3102 of this title not to exceed $115,000,000 for the fiscal year commencing July 1, 1969, and not to exceed $100,000,000 for the fiscal year commencing July 1, 1970. In addition, upon the enactment of the Emergency Community Facilities Act of 1970, there is authorized to be appropriated for grants under section 702 not to exceed $1,000,000,000 for the fiscal year commencing July 1, 1970. In addition, there is authorized to be appropriated for the fiscal year commencing July 1, 1971, not to exceed $50,000,000 for grants under section 3103 of this title.

(b) Any amounts appropriated under this section shall remain available until expended, and any amounts authorized for any fiscal year under this section but not appropriated may be appropriated for any succeeding fiscal year commencing prior to September 30, 1972. (As amended Pub. L. 92–335, § 3, July 1, 1972, 86 Stat. 405.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–335 substituted "September 30, 1972" for "July 1, 1972".

1970—Subsec. (a). Pub. L. 91–609, § 304(a), authorized appropriation of $50,000,000 for fiscal year commencing July 1, 1971, for grants under section 3103 of this title.

Pub. L. 91–431, § 3(a), authorized appropriations for grants under section 3102 of this title of not to exceed $1,000,000,000 for the fiscal year commencing July 1, 1970.

Subsec. (b). Pub. L. 91–609, § 304(b), substituted "July 1, 1972" for "July 1, 1971".

Pub. L. 91–431, § 3(b), substituted "July 1, 1972" for "July 1, 1971".

1969—Subsec. (a). Pub. L. 91–152, § 305(c), authorized appropriations of not more than $100,000,000 for the fiscal year commencing July 1, 1970.

Subsec. (b). Pub. L. 91–152, § 305(b), substituted "July 1, 1971" for "July 1, 1970".

1968—Subsec. (a). Pub. L. 90–448, § 605(b), authorized appropriations of not more than $350,000,000 for the fiscal year commencing July 1, 1968, and not more than $115,000,000 for the fiscal year commencing July 1, 1969.

Subsec. (b). Pub. L. 90–448, § 605(a), substituted "July 1, 1970" for "July 1, 1969."

3. Cropland Adjustment for Pollution Control

7 U.S.C. 1838

1838. Conversion of cropland into vegetative cover, water storage, wildlife and conservation uses; contracts with farmers.

- (a) Authority for calendar years 1965 through 1970; term of agreements.
- (b) Terms of agreement; specifically designated acreage; land use.
- (c) Federal costs; annual adjustment payment.
- (d) Advertising and bid procedures.
- (e) Annual adjustment payment; limitation.
- (f) Termination or modification of agreements.
- (g) Allotment histories.
- (h) Utilization of local, county, and State committees.
- (i) Transfer of funds.
- (j) Conservation of open spaces, natural beauty, and recreational resources, and prevention of pollution.
- (k) Limitation on payments during any calendar year.
- (l) Use of facilities of Commodity Credit Corporation.
- (m) Payment to successor upon death, incompetence, or disappearance of producer entitled to payment.
- (n) Sharing of compensation or payments with tenants and sharecroppers.
- (o) Effect of diversion on commodity programs.
- (p) Advisory Board on Wildlife; membership.
- (q) Rules and regulations.

§ 1838. Conversion of cropland into vegetative cover, water storage, wildlife and conservation uses; contracts with farmers.

(a) Authority for calendar years 1965 through 1970; term of agreements.

Notwithstanding any other provision of law, for the purpose of reducing the costs of farm programs, assisting farmers in turning their land to nonagricultural uses, promoting the development and conservation of the Nation's soil, water, forest, wildlife, and recreational resources, establishing, protecting, and conserving open spaces and natural beauty, the Secretary of Agriculture is authorized to formulate and carry out a program during the calendar years 1965 through 1970 under which agreements would be entered into with producers as hereinafter provided for periods of not less than five nor more than ten years. No agreement shall be entered into under this section concerning land with respect to which the ownership has changed in the three-year period preceding the first year of the agreement period unless the new ownership was acquired by will or succession as a result of the death of the previous owner, or unless the new ownership was acquired prior to January 1, 1965, under other circumstances which the Secretary determines, and specifies by regulation, will give adequate assurance that such land was not acquired for the purpose of placing it in the program: *Provided*, That this provision shall not be construed to prohibit the continuation of an agreement by a new owner after an agreement has once been entered into under this section: *Provided further*, That the Secretary shall not require a person who has operated the land to be covered by an agreement under this section for as long as three years preceding the date of the agreement and who controls the land for the agreement period to own the land as a condition of eligibility for entering into the agreement. The foregoing provision shall not prevent a producer from placing a farm in the program if the farm was acquired by the producer to replace an eligible farm from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain.

(b) Terms of agreement; specifically designated acreage; land use.

The producer shall agree (1) to carry out on a specifically designated acreage of land on the farm regularly used in the production of crops (including crops, such as tame hay, alfalfa, and clovers, which do not require annual tillage and which have been planted within five years preceding the date of the agreement), hereinafter called "designated acreage", and maintain for the agreement period practices or uses which will conserve soil, water, or forest resources, or establish or protect or conserve open spaces, natural beauty, wildlife or recreational resources, or prevent air or water pollution, in such manner as the Secretary may prescribe (priority being given to the extent practicable to practices or uses which are most likely to result in permanent retirement to noncrop uses); (2) to maintain in conserving crops or uses or allow to remain idle throughout the agreement period the acreage normally devoted to such crops or uses; (3) not to harvest any crop from or graze the designated acreage during the agreement period, unless the Secretary, after certification by the Governor of the State in which such acreage is situated of the need for grazing or harvesting of such acreage, determines that it is necessary to permit grazing or harvesting in order to alleviate damage, hardship, or suffering caused by severe drought, flood, or other natural disaster, and consents to such grazing or harvesting subject to an appropriate reduction in the rate of payment; and (4) to such additional terms and conditions as the Secretary determines are desirable to effectuate the purposes of the program, including such measures as the Secretary may deem appropriate to keep the designated acreage free from erosion, insects, weeds, and rodents. Agreements entered into under which 1966 is the first year of the agreement period (A) shall require the producer to divert from production all of one or more crops designated by the Secretary; and (B) shall not provide for diversion from the production of upland cotton in any county in which the county committee by resolution determines, and requests of the Secretary, that there should not be such diversion in 1966.

(c) Federal costs; annual adjustment payment.

Under such agreements the Secretary shall (1) bear such part of the average cost (including labor) for the county or area in which the farm is situated

of establishing and maintaining authorized practices or uses on the designated acreage as the Secretary determines to be necessary to effectuate the purposes of the program, but not to exceed the average rate for comparable practices or uses under the agricultural conservation program, and (2) make an annual adjustment payment to the producer for the period of the agreement at such rate or rates as the Secretary determines to be fair and reasonable in consideration of the obligations undertaken by the producers. The rate or rates of annual adjustment payments as determined hereunder may be increased by an amount determined by the Secretary to be appropriate in relation to the benefit to the general public of the use of the designated acreage if the producer further agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations. The Secretary and the producer may agree that the annual adjustment payments for all years of the agreement period shall be made either upon approval of the agreement or in such installments as they may agree to be desirable: *Provided*, That for each year any annual adjustment payment is made in advance of performance, the annual adjustment payment shall be reduced by 5 per centum. The Secretary may provide for adjusting any payment on account of failure to comply with the terms and conditions of the program.

(d) Advertising and bid procedures.

The Secretary shall, unless he determines that such action will be inconsistent with the effective administration of the program, use an advertising and bid procedure in determining the lands in any area to be covered by agreements. The total acreage placed under contract in any county or local community shall be limited to a percentage of the total eligible acreage in such county or local community which the Secretary determines would not adversely affect the economy of the county or local community. In determining such percentage the Secretary shall give appropriate consideration to the productivity of the acreage being retired as compared to the average productivity of eligible acreage in the county or local community.

(e) Annual adjustment payment; limitation.

The annual adjustment payment shall not exceed 40 per centum of the estimated value, as determined by the Secretary, on the basis of prices in effect at the time the agreement is entered into, of the crops or types of crops which might otherwise be grown. The estimated value may be established by the Secretary on a county, area, or individual farm basis as he deems appropriate.

(f) Termination or modification of agreements.

The Secretary may terminate any agreement with a producer by mutual agreement with the producer if the Secretary determines that such termination would be in the public interest, and may agree to such modification of agreements as he may determine to be desirable to carry out the purposes of the program or facilitate its administration.

(g) Allotment histories.

Notwithstanding any other provision of law, the Secretary of Agriculture may, to the extent he deems it desirable, provide by appropriate regulations for preservation of cropland, crop acreage, and allotment history applicable to acreage diverted from the production of crops in order to establish or maintain vegetative cover or other approved practices for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation or for participation in such program.

(h) Utilization of local, county, and State committees.

In carrying out the program, the Secretary shall utilize the services of local, county, and State committees established under section 590h of Title 16.

(i) Transfer of funds.

For the purpose of obtaining an increase in the permanent retirement of cropland to noncrop uses the Secretary may, notwithstanding any other provision of law, transfer funds available for carrying out the program to any other Federal agency or to States or local government agencies for use in acquiring cropland for the preservation of open spaces, natural beauty, the development of wildlife or recreational facilities, or the prevention of air or water pollution under terms and conditions consistent with and at costs not greater than those under agreements entered into with producers, provided the Secretary determines that the purposes of the program will be accomplished by such action.

(j) Conservation of open spaces, natural beauty, and recreational resources, and prevention of pollution.

The Secretary also is authorized to share the cost with State and local governmental agencies in the establishment of practices or uses which will establish, protect, and conserve open spaces, natural beauty, wildlife or recreational resources, or prevent air or water pollution under terms and conditions and at costs consistent with those under agreements entered into with producers, provided the Secretary determines that the purposes of the program will be accomplished by such action.

(k) Limitation on payments during any calendar year.

In carrying out the program, the Secretary shall not during any of the fiscal years ending June 30, 1966 through June 30, 1969 or during the period June 30, 1969 through December 31, 1970, enter into agreements with producers which would require payments to producers in any calendar year under such agreements in excess of $225,000,000 plus any amount by which agreements entered into in prior fiscal years require payments in amounts less than authorized for such prior fiscal years. For purposes of applying this limitation, the annual adjustment payment shall be chargeable to the year in which performance is rendered regardless of the year in which it is made.

(l) Use of facilities of Commodity Credit Corporation.

The Secretary is authorized to utilize the facilities, services, authorities, and funds of the Commodity

Credit Corporation in discharging his functions and responsibilities under this program, including payment of costs of administration: *Provided*, That after December 31, 1966, the Commodity Credit Corporation shall not make any expenditures for carrying out the purposes of this subchapter unless the Corporation has received funds to cover such expenditures from appropriations made to carry out the purposes of this subchapter. There are hereby authorized to be appropriated such sums as may be necessary to carry out the program, including such amounts as may be required to make payments to the Corporation for its actual costs incurred or to be incurred under this program.

(m) Payment to successor upon death, incompetence, or disappearance of producer entitled to payment.

In case any producer who is entitled to any payment or compensation dies, becomes incompetent, or disappears before receiving such payment or compensation, or is succeeded by another who renders or completes the required performance, the payment or compensation shall, without regard to any other provisions of law, be made as the Secretary may determine to be fair and reasonable in all the circumstances and so provide by regulations.

(n) Sharing of compensation or payments with tenants and sharecroppers.

The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments or compensation under this program.

(o) Effect of diversion on commodity programs.

The acreage on any farm which is diverted from the production of any commodity pursuant to an agreement hereafter entered into under this subchapter shall be deemed to be acreage diverted from that commodity for the purposes of any commodity program under which diversion is required as a condition of eligibility for price support.

(p) Advisory Board on Wildlife; membership.

The Secretary may, without regard to the civil service laws, appoint an Advisory Board on Wildlife to advise and consult on matters relating to his functions under this subchapter as he deems appropriate. The Board shall consist of twelve persons chosen from members of wildlife organizations, farm organizations, State game and fish agencies, and representatives of the general public. Members of such Advisory Board who are not regular full-time employees of the United States shall not be entitled to any compensation or expenses.

(q) Rules and regulations.

The Secretary shall prescribe such regulations as he determines necessary to carry out the provisions of this subchapter. (Pub. L. 89–321, title VI, § 602, Nov. 3, 1965, 79 Stat. 1206; Pub. L. 90–210, Dec. 18, 1967, 81 Stat. 657; Pub. L. 90–559, § 1(1), (7), Oct. 11, 1968, 82 Stat. 996.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–559, § 1(1), provided for a one year extension through 1970.

Subsec. (k). Pub. L. 90–559, § 1(7), substituted "June 30, 1969" for "June 30, 1968" in two instances and "December 31, 1970" for "December 31, 1969".

1967—Subsec. (a). Pub. L. 90–210 permitted a farm to be placed in the cropland adjustment program without regard to the length of past ownership if that farm was acquired in replacement of an eligible farm which was taken by any Federal, State, or other agency by means of eminent domain proceedings

4. Environmental Financing Authority

Public Law 92–500 § 12

Section 12 of Pub. L. 92–500 provided that:

"(a) [Short Title] This section may be cited as the Environmental Financing Act of 1972.

"(b) [Establishment] There is hereby created a body corporate to be known as the Environmental Financing Authority, which shall have succession until dissolved by Act of Congress. The Authority shall be subject to the general supervision and direction of the Secretary of the Treasury. The Authority shall be an instrumentality of the United States Government and shall maintain such offices as may be necessary or appropriate in the conduct of its business.

"(c) [Congressional Declaration of Purpose] The purpose of this section is to assure that inability to borrow necessary funds on reasonable terms does not prevent any State or local public body from carrying out any project for construction of waste treatment works determined eligible for assistance pursuant to subsection (e) of this section.

"(d) [Board of Directors] (1) The Authority shall have a Board of Directors consisting of five persons, one of whom shall be the Secretary of the Treasury or his designee as Chairman of the Board, and four of whom shall be appointed by the President from among the officers or employees of the Authority or of any department or agency of the United States Government.

"(2) The Board of Directors shall meet at the call of its Chairman. The Board shall determine the general policies which shall govern the operations of the Authority. The Chairman of the Board shall select and effect the appointment of qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Authority and shall discharge all such executive functions, powers, and duties. The members of the Board, as such, shall not receive compensation for their services

"(e) [Purchase of State and Local Obligations] (1) Until July 1, 1975, the Authority is authorized to make commitments to purchase, and to purchase on terms and conditions determined by the Authority, any obligation or participation therein which is issued by a State or local public body to finance the non-Federal share of the cost of any project for the construction of waste treatment works which the Administrator of the Environmental Protection Agency has determined to be eligible for Federal financial assistance under the Federal Water Pollution Control Act [this chapter].

"(2) No commitment shall be entered into, and no purchase shall be made, unless the Administrator of the Environmental Protection Agency (A) has certified that the public body is unable to obtain on reasonable terms sufficient credit to finance its actual needs; (B) has approved the project as eligible under the Federal Water Pollution Control Act [this chapter], and (C) has agreed to guarantee timely payment of principal and interest on the obligation. The Administrator is authorized to guarantee such timely payments and to issue regulations as

he deems necessary and proper to protect such guarantees. Appropriations are hereby authorized to be made to the Administrator in such sums as are necessary to make payments under such guarantees, and such payments are authorized to be made from such appropriations.

"(3) No purchase shall be made of obligations issued to finance projects, the permanent financing of which occurred prior to the enactment of this section [Oct. 18, 1972].

"(4) Any purchase by the Authority shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury taking into consideration (A) the current average yield on outstanding marketable obligations of the United States of comparable maturity or in its stead whenever the Authority has sufficient of its own long-term obligations outstanding, the current average yield on outstanding obligations of the Authority of comparable maturity; and (B) the market yields on municipal bonds.

"(5) The Authority is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves and such fees shall be included in the aggregate project costs.

"(f) [Initial Capital] To provide initial capital to the Authority the Secretary of the Treasury is authorized to advance the funds necessary for this purpose. Each such advance shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. Interest payments on such advances may be deferred, at the discretion of the Secretary, but any such deferred payments shall themselves bear interest at the rate specified in this section. There is authorized to be appropriated not to exceed $100,000,000, which shall be available for the purposes of this subsection.

"(g) [Issuance of Obligations] (1) The Authority is authorized, with the approval of the Secretary of the Treasury, to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Authority. Such obligations may be redeemable at the option of the Authority before maturity in such manner as may be stipulated therein.

"(2) As authorized in appropriation Acts, and such authorizations may be without fiscal year limitations, the Secretary of the Treasury may in his discretion purchase or agree to purchase any obligations issued pursuant to paragraph (1) of this subsection, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act [section 752 et seq. of Title 31], as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act [section 752 et seq. of Title 31], as now or hereafter in force, are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this paragraph. All purchases and sales by the Secretary of the Treasury of such obligations under this paragraph shall be treated as public debt transactions of the United States.

"(h) [Interest Differential] The Secretary of the Treasury is authorized and directed to make annual payments to the Authority in such amounts as are necessary to equal the amount by which the dollar amount of interest expense accrued by the Authority on account of its obligations exceeds the dollar amount of interest income accrued by the Authority on account of obligations purchased by it pursuant to subsection (e) of this section.

"(i) [Powers] The Authority shall have power—

"(1) to sue and be sued, complain and defend, in its corporate name;

"(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

"(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this section in any State without regard to any qualification or similar statute in any State;

"(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Authority;

"(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(8) to appoint such officers, attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined, subject to the civil service and classification laws, to require bonds for them and pay the premium thereof; and

"(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

"(j) [Tax Exemption, Exemptions] The Authority, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (A) any real property and any tangible personal property of the Authority shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (B) any and all obligations issued by the Authority shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.

"(k) [Nature of Obligations] All obligations issued by the Authority shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof All obligations issued by the Authority pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are issued by the United States.

"(l) [Preparation of Obligations by Secretary of the Treasury] In order to furnish obligations for delivery by the Authority, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Authority may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Authority. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith, shall remain in the custody of the Secretary of the Treasury. The Authority shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations.

"(m) [Annual Report to Congress] The Authority shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities

"(n) [Subsec. (n) amended section 24 of Title 12, Banks and Banking, and is not set out herein.]

"(o) [Financial Controls] The budget and audit provisions of the Government Corporation Control Act (31 U.S.C. 846) shall be applicable to the Environmental Financing Authority in the same manner as they are applied to the wholly owned Government corporations.

"(p) [Subsec. (p) amended section 711 of Title 31, Money and Finance, and is not set out herein.]"

5. Exchanges in Compliance With Securities and Exchange Commission Orders

26 U.S.C. 1082

§ 1082. Basis for determining gain or loss.

(a) Exchanges generally.

(1) Exchanges subject to the provisions of section 1081 (a) or (e).

If the property was acquired on an exchange subject to the provisions of section 1081 (a) or (e), or the corresponding provisions of prior internal revenue laws, the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer, and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 1081 (a) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(2) Exchanges subject to the provisions of section 1081(b).

The gain not recognized on a transfer by reason of section 1081(b) or the corresponding provisions of prior internal revenue laws shall be applied to reduce the basis for determining gain or loss on sale or exchange of the following categories of property in the hands of the transferor immediately after the transfer, and property acquired within 24 months after such transfer by an expenditure or investment to which section 1081(b) relates on account of the acquisition of which gain is not recognized under such subsection, in the following order:

(A) property of a character subject to the allowance for depreciation under section 167;

(B) property (not described in subparagraph (A)) with respect to which a deduction for amortization is allowable under section 168, 169, **184, 187, 188 or 191;**

* * * * *

The manner and amount of the reduction to be applied to particular property within any of the categories described in subparagraphs (A) to (G), inclusive, shall be determined under regulations prescribed by the Secretary or his delegate.

* * * * *

(Aug. 16, 1954, ch. 736, 68A Stat. 315; Dec. 30, 1969, Pub. L. 91–172, title VII, § 704(b)(3), 83 Stat. 699.)

(As amended Dec. 10, 1971, Pub. L. 92–178, title III, **§ 303(c)(5), 85 Stat. 522; Pub. L. 94–455, § 2124(a)(3)(C), Oct. 4, 1976, 90 Stat. 1917.)**

AMENDMENTS

1971—Subsec. (a)(2)(B). Pub. L. 92–178 included reference to section 188.

1969—Subsec. (f). Pub. L. 91–172 inserted reference to sections 184, 185 and 187 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment of subsec. (a)(2)(B) of this section by Pub. L. 92–178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92–178, set out as a note under section 188 of this title.

6. Grants for Public Works and Development Facilities

42 U.S.C. 3131–3133; 3135–3136

Sec.

3131. Direct and supplementary grants.
- (a) Acquisition or development of public works and development facilities; required findings precedent to making of direct grants; supplementary grants to provide matching share funds.
- (b) Maximum proportion of direct grant funds to total project cost.
- (c) Proportion of supplementary grant funds to total project cost; rules and regulations; maximum grants; required non-Federal share.
- (d) Rules and regulations; consideration of unemployment and underemployment in determining rules.

* * * * *

- (f) Review and comment upon projects by local governmental authorities.

3132. Additional grants to areas of substantial unemployment during preceding calendar year; annual review of eligibility.

3133. Limitation of funds expended in any one State.

* * * * *

3135. Authorization of appropriations.

3136. Sewer and other waste disposal facilities; certification by Administrator of the Environmental Protection Agency regarding adequate treatment prior to discharge into streams.

3137. Construction cost increases.

§ 3131. Direct and supplementary grants.

(a) Acquisition or development of public works and development facilities; required findings precedent to making of direct grants; supplementary grants to provide matching share funds.

Upon the application of any State, or political

subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area or part thereof, the Secretary of Commerce (hereinafter referred to as the Secretary) is authorized—

(1) to make direct grants for the acquisition or development of land and improvements for public works, public service, or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment, within a redevelopment area, if he finds that—

(A) the project for which financial assistance is sought will directly or indirectly (i) tend to improve the opportunities, in the area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities, (ii) otherwise assist in the creation of additional long-term employment opportunities for such area, or (iii) primarily benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

(B) the project for which a grant is requested will fulfill a pressing need of the area, or part thereof, in which it is, or will be, located;

(C) the area for which a project is to be undertaken has an approved overall economic development program as provided in section 3142 (b)(10) of this title and such project is consistent with such program; and

(D) in the case of a redevelopment area so designated under section 3161(a)(6) of this title, the project to be taken will provide immediate useful work to unemployed and underemployed persons in that area;

(2) to make supplementary grants in order to enable the States and other entities within redevelopment areas to take maximum advantage of designated Federal grant-in-aid programs (as hereinafter defined), direct grants-in-aid authorized under this section, and Federal grant-in-aid programs authorized by the Watershed Protection and Flood Prevention Act (68 Stat. 666, as amended), and the eleven watersheds authorized by the Flood Control Act of December 22, 1944, as amended and supplemented (58 Stat. 887), for which they are eligible but for which, because of their economic situation, they cannot supply the required matching share.

(b) Maximum proportion of direct grant funds to total project cost.

Subject to subsection (c) hereof, the amount of any direct grant under this section for any project shall not exceed 50 per centum of the cost of such project.

(c) Proportion of supplementary grant funds to total project cost; rules and regulations; maximum grants; required non-Federal share.

The amount of any supplementary grant under this section for any project shall not exceed the applicable percentage established by regulations promulgated by the Secretary, but in no event shall the non-Federal share of the aggregate cost of any such project (including assumptions of debt) be less than 20 per centum of such cost, except that in the case of a grant to an Indian tribe, the Secretary may reduce the non-Federal share below such per centum or may waive the non-Federal share. In the case of any State or political subdivision thereof which the Secretary determines has exhausted its effective taxing and borrowing capacity, the Secretary shall reduce the non-Federal share below such per centum or shall waive the non-Federal share in the case of such a grant for a project in a redevelopment area designated as such under section 3161(a)(6) of this title. In case of any community development corporation which the Secretary determines has exhausted its effective borrowing capacity, the Secretary may reduce the non-Federal share below such per centum or waive the non-Federal share in the case of such a grant for a project in a redevelopment area designated as such under section 3161(a)(6) of this title.

Supplementary grant shall be made by the Secretary, in accordance with such regulations as he shall prescribe, by increasing the amounts of direct grants authorized under this section or by the payment of funds appropriated under this chapter to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the administration of the applicable Federal programs. Notwithstanding any requirement as to the amount or sources of non-Federal funds that may otherwise be applicable to the Federal program involved, funds provided under this subsection shall be used for the sole purpose of increasing the Federal contribution to specific projects in redevelopment areas under such programs above the fixed maximum portion of the cost of such project otherwise authorized by the applicable law. The term "designated Federal grant-in-aid programs," as used in this subsection, means such existing or future Federal grant-in-aid programs assisting in the construction or equipping of facilities as the Secretary may, in furtherance of the purposes of this chapter, designate as eligible for allocation of funds under this section. In determining the amount of any supplementary grant available to any project under this section, the Secretary shall take into consideration the relative needs of the area, the nature of the project to be assisted, and the amount of such fair user charges or other revenues as the project may reasonably be expected to generate in excess of those which would amortize the local share of initial costs and provide for its successful operation and maintenance (including depreciation).

(d) Rules and regulations; consideration of unemployment and underemployment in determining rules.

The Secretary shall prescribe rules, regulations, and procedures to carry out this section which will assure that adequate consideration is given to the relative needs of eligible areas. In prescribing such rules, regulations, and procedures the Secretary shall consider among other relevant factors (1) the severity of the rates of unemployment in the eligible areas and the duration of such unemployment and

(2) the income levels of families and the extent of underemployment in eligible areas.

(e) Repealed. Pub. L. 94–487, title I, § 103(a), Oct. 12, 1976, 90 Stat. 2331.

(f) Review and comment upon projects by local governmental authorities.

The Secretary shall prescribe regulations which will assure that appropriate local governmental authorities have been given a reasonable opportunity to review and comment upon proposed projects under this section. (Pub. L. 89–136, title I, § 101, Aug. 26, 1965, 79 Stat. 522; Pub. L. 91–123, title III, § 301(1), Nov. 25, 1969, 83 Stat. 219.)

(As amended Pub. L. 92–65, title I, § 102, Aug. 5, 1971, 85 Stat. 166; Pub. L. 94–487, title I, § 103, Oct. 12, 1976, 90 Stat. 2331.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–487. § 103(b), substituted "shall" for "may" in the second sentence. Pub. L. 94–487, § 103(c), added the third sentence.

1971—Subsec. (a)(1). Pub. L. 92–65, § 102(a), added subpar. (D).

Subsec. (c). Pub. L. 92–65, § 102(b), added provisions authorizing the Secretary to reduce the non-Federal share below the prescribed per centum or to waive the non-Federal share in the case of a supplementary grant for a project in a redevelopment area designated as such under section 3161(a)(6) of this title, when he determines that the state or the political subdivision thereof has exhausted its effective taxing and borrowing capacity.

1969—Subsec. (c). Pub. L. 91–123 authorized the Secretary to waive in whole or part the 20 per centum non-Federal share requirement for project grants to Indian tribes.

§ 3132. Grants for operation of health projects; amounts for first and second fiscal years of operation; efficient management practices of facilities as prerequisite.

For each of the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, and September 30, 1979, not to exceed $30,000,000 of the funds authorized to be appropriated under section 3135 of this title for each such fiscal year, and for period beginning July 1, 1976, and ending September 30, 1976, not to exceed $7,500,000 of the funds authorized to be appropriated under such section 3152 for such period, shall be available for grants for operation of any health project funded under this subchapter after the date of enactment of this section. Such grants may be made up to 100 per centum of the estimated cost of the first fiscal year of operation, and up to 100 percentum of the deficit in funds available for operation of the facility during the second fiscal year of operation. No grant shall be made for the second fiscal year of operation of any facility unless the agency operating such facility has adopted a plan satisfactory to the Secretary of Health, Education, and Welfare, providing for the funding of operations on a permanent basis. Any grant under this section shall be made upon the condition that the operation of the facility will be conducted under efficient management practices designed to obviate operating deficits, as determined by the Secretary of Health, Education, and Welfare. (As amended Pub. L. 93–423, § 2, Sept. 27, 1974, 88 Stat. 11588; Pub. L. 94–487, § 104, Oct 12, 1976, 90 Stat. 2331.)

AMENDMENTS

1976—Pub. L. 94–487, § 104(a), made funds authorized under section 3135 available through September 30, 1979. Pub. L. 94–487, § 104(b), made funds authorized under section 3152 available during fiscal year 1976.

1974—Pub. L. 93–423 substituted provisions relating to the availability of grants for operation of health projects funded under this subchapter for provisions relating to grants to areas designated as areas of substantial unemployment, and review of eligibility of areas so designated.

§ 3133. Limitation of funds expended in any one State.

Not more than 15 per centum of the appropriations made pursuant to this subchapter may be expended in any one State. (Pub. L. 89–136, title I, § 103, Aug. 26, 1965, 79 Stat. 554.)

* * * * *

§ 3135. Authorization of appropriations.

There is hereby authorized to be appropriated to carry out this subchapter not to exceed $500,000,000 for the fiscal year ending June 30, 1966, and for each fiscal year thereafter through the fiscal year ending June 30, 1971, and not to exceed $800,000,000 per fiscal year for the fiscal years ending June 30, 1972, and June 30, 1973, and not to exceed $200,000,000 for the fiscal year ending June 30, 1974, not to exceed $200,000,000 for the fiscal year ending June 30, 1975, and not to exceed $250,000,000 for the fiscal year ending June 30, 1976, not to exceed $62,500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed $425,000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979. Any amounts authorized for the fiscal year ending June 30, 1972, under this section but not appropriated may be appropriated for the fiscal year ending June 30, 1973. Not less than 25 per centum nor more than 35 per centum of all appropriations made for the fiscal years ending June 30, 1972, June 30, 1973, and June 30, 1974, and not less than 15 per centum nor more than 35 per centum of all appropriations made for the fiscal years ending June 30, 1975 and June 30, 1976, the period beginning July 1, 1976, and ending September 30, 1976, and the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979, under authority of the preceding sentences shall be expended in redevelopment areas designated as such under section 3161(a)(6) of this title. (As amended Pub. L. 92–65, title I, § 103, Aug. 5, 1971, 85 Stat. 166; Pub. L. 93–46, § 1, June 18, 1973, 87 Stat. 96; Pub. L. 93–423, § 1, Sept. 27, 1974, 88 Stat. 1158; Pub. L. 94–487, § 105, Oct. 12, 1976, 90 Stat. 2331.)

AMENDMENTS

1976—Pub. L. 94–487, § 105, added ", not to exceed $62,500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed $425,-

000,000 per fiscal year for the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979, following "for the fiscal year ending June 30, 1976" and added "the period beginning July 1, 1976, and ending September 30, 1976, and the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979," following "and June 30, 1976," and substituted "15 per centum" for "10 per centum."

1974—Pub. L. 93–423 added "not to exceed $200,000,000 for the fiscal year ending June 30, 1975, and not to exceed $250,000,000 for the fiscal year ending June 30, 1976," following "for the fiscal year ending June 30, 1974,", and added "and not less than 10 per centum nor more than 35 per centum of all appropriations made for the fiscal years ending June 30, 1975 and June 30, 1976," following "and June 30, 1974,".

1973—Pub. L. 93–46 authorized appropriations of not exceeding $200,000,000 for fiscal year ending June 30, 1974, and made the percentage limitation applicable to fiscal year 1974 appropriation for expenditure in redevelopment areas designated under section 3161(a)(6) of this title.

1971—Pub. L. 92–65 authorized appropriations of not exceeding $800,000,000 per fiscal year for the fiscal years ending June 30, 1972 and June 30, 1973, and further provided that amounts authorized for the fiscal year ending June 30, 1972 but not appropriated, may be appropriated for the fiscal year ending June 30, 1973, and that out of appropriations made for the fiscal years ending June 30, 1972 and June 30, 1973, not less than 25 percent and not more than 35 percent be spent in redevelopment areas designated under section 3161(a)(6) of this title.

§ 3136. Sewer and other waste disposal facilities; certification by Administrator of the Environmental Protection Agency regarding adequate treatment prior to discharge into streams.

No financial assistance, through grants, loans, guarantees, or otherwise, shall be made under this chapter to be used directly or indirectly for sewer or other waste disposal facilities unless the Administrator of the Environmental Protection Agency certifies to the Secretary that any waste material carried by such facilities will be adequately treated before it is discharged into any public waterway so as to meet applicable Federal, State, interstate, or local water quality standards. (Pub. L. 89–136, title I, § 106, Aug. 26, 1965, 79 Stat. 554; 1966 Reorg. Plan No. 2, § 1 (h)(3), eff. May 10, 1966, 31 F.R. 6857, 80 Stat. 1608; 1970 Reorg. Plan No. 3, § 2(a)(1), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086.)

§ 3137. Construction cost increases.

In any case where a grant (including a supplemental grant) has been made under this title for a project and after such grant has been made but before completion of the project, the cost of such project based upon the designs and specifications which were the basis of the grant has been increased because of increases in costs, the amount of such grant may be increased by an amount equal to the percentage increase, as determined by the Secretary, in such costs, but in no event shall the percentage of the Federal share of such project exceed that originally provided for in such grant. (Added Pub. L. 94–487, § 106, Oct. 12, 1976, 90 Stat. 2332.)

7. Itemized Deductions for Individuals and Corporations

26 U.S.C. 169, 175

169. Amortization of pollution control facilities

* * * * *

175. Soil and water conservation expenditures.

* * * * *

§ 169. Amortization of pollution control facilities.

(a) Allowance of deduction.

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such pollution control facility for such month provided by sec. 167.[1] The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

(b) Election of amortization.

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction.

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be

[1] Section 167 details the manner in which depreciation is computed.

allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

(d) Definitions.

For purposes of this section—

(1) Certified pollution control facility.

The term "certified pollution control facility" means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of of [1] pollutants, contaminants, wastes, or heat and which—

(A) the State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authorty as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination;

(B) the Federal certifying authority has certified to the Secretary or his delegate (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) does not significantly—

(i) increase the output or capacity, extend the useful life, or reduce the total operating costs of such plant or other property (or any unit thereof), or

(ii) alter the nature of the manufacturing or production process or facility.

(2) State certifying authority.

The term "State certifying authority" means, in the case of water pollution, the State water pollution control agency as defined in section 13 (a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term "State certifying authority" includes any interstate agency authorized to act in place of a certifying authority of the State.

(3) Federal certifying authority.

The term "Federal certifying authority" means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health, Education, and Welfare.

(4) New identifiable treatment facility.

(A) IN GENERAL.—For purposes of paragraph (1), the term 'new identifiable treatment facility' includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property—

(i) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date.

In applying this section in the case of property described in clause (i) there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

(B) CERTAIN PLANTS, ETC., PLACED IN OPERATION AFTER 1968.—In the case of any treatment facility used in connection with any plant or other property not in operation before January 1, 1969, the preceding sentence shall be applied by substituting December 31, 1975, for December 31, 1968.

(e) Profitmaking abatement works, etc.

The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

(f) Amortizable basis.

(1) Defined.

For purposes of this section, the term "amortizable basis" means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

(2) Special rules.

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in effect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

(g) Depreciation deduction.

The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be

[1] So in amending law.

allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

(h) Repealed. Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502.

(i) Life tenant and remainderman.

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) Cross reference.

For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(As amended Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502; Pub. L. 94–455, § 2112(b), (c), Oct. 4, 1976, 90 Stat. 1906.)

AMENDMENTS

1976—Subsec. (d)(1). Pub. L. 94–455, § 2112(b), substituted "January 1, 1976" for "January 1, 1969"; added ", or preventing the creation or emission of" following "storing"; and adding subparagraph (c).

Subsec. (d)(4). Pub. L. 94–455, § 2112(c), revised this subsection.

1971—Subsec. (h). Pub. L. 92–178 struck out subsec. (h) provision that investment credit not be allowed, now covered in section 48(a)(8) of this title.

* * * * *

§ 175. Soil and water conservation expenditures.

(a) In general.

A taxpayer engaged in the business of farming may treat expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(b) Limitation.

The amount deductible under subsection (a) for any taxable year shall not exceed 25 percent of the gross income derived from farming during the taxable year. If for any taxable year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the taxable year, such excess shall be deductible for succeeding taxable years in order of time; but the amount deductible under this section for any one such succeeding taxable year (including the expenditures actually paid or incurred during the taxable year) shall not exceed 25 percent of the gross income derived from farming during the taxable year.

(c) Definitions.

For purposes of subsection (a)—

(1) The term "expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming" means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks. Such term does not include—

(A) the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in section 167, or

(B) any amount paid or incurred which is allowable as a deduction without regard to this section.

Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district (i) which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section, or (ii) for property of a character subject to the allowance for depreciation provided in section 167 and used in the soil or water conservation or drainage district's business as such (to the extent that the taxpayer's share of the assessment levied on the members of the district for such property does not exceed 10 percent of such assessment).

(2) The term "land used in farming" means land used (before or simultaneously with the expenditures described in paragraph (1)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(d) When method may be adopted.

(1) Without consent.

A taxpayer may, without the consent of the Secretary or his delegate, adopt the method provided in this section for his first taxable year—

(A) which begins after December 31, 1953, and ends after August 16, 1954, and

(B) for which expenditures described in subsection (a) are paid or incurred.

(2) With consent.

A taxpayer may, with the consent of the Secretary or his delegate, adopt at any time the method provided in this section.

(e) Scope.

The method adopted under this section shall apply to all expenditures described in subsection (a). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary or his delegate, a change to a different method is authorized with respect to part or all of such expenditures.

(f) Rules applicable to assessments for depreciable property.—

(1) Amounts treated as paid or incurred over 9-year period.

In the case of an assessment levied to defray expenditures for property described in clause (ii) of the last sentence of subsection (c)(1), if the

amount of such assessment paid or incurred by the taxpayer during the taxable year (determined without the application of this paragraph) is in excess of an amount equal to 10 percent of the aggregate amounts which have been and will be assessed as the taxpayer's share of the expenditures by the district for such property, and if such excess is more than $500, the entire excess shall be treated as paid or incurred ratably over each of the 9 succeeding taxable years.

(2) Disposition of land during 9-year period.

If paragraph (1) applies to an assessment and the land with respect to which such assessment was made is sold or otherwise disposed of by the taxpayer (other than by the reason of his death) during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending on or before the sale or other disposition shall be added to the adjusted basis of such land immediately prior to its sale or other disposition and shall not thereafter be treated as paid or incurred ratably under paragraph (1).

(3) Disposition by reason of death.

If paragraph (1) applies to an assessment and the taxpayer dies during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending before his death shall be treated as paid or incurred in the taxable year in which he dies.

(Aug. 16, 1954, ch. 736, 68A Stat. 67; Oct. 22, 1968, Pub. L. 90-630, § 5(a), (b), 82 Stat. 1329.)

AMENDMENTS

1968—Subsec. (c)(1). Pub. L. 90-630, § 5(a), in the material following subpar. (B), designated as cl. (i) existing provisions covering amounts which, if paid or incurred by the taxpayer, would without regard to the exception constitute deductible expenditures, and added cl. (ii). Subsec. (f). Pub. L. 90-630, § 5(b), added subsec. (f).

8. Interest in Certain Governmental Obligations

26 U.S.C. 103

§ 103. Interest on certain governmental obligations.

(a) General rule.

Gross income does not include interest on—

(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; and

(2) qualified scholarship funding bonds.

(b) Industrial development bonds.

(1) Subsection (a)(1) or (2) not to apply.

Except as otherwise provided in this subsection, any industrial development bond shall be treated as an obligation not described in subsection (a)(1).

(2) Industrial development bond.

For purposes of this subsection, the term "industrial development bond" means any obligation—

(A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (within the meaning of paragraph (3)), and

(B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part—

(i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or

(ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

(3) Exempt person.

For purposes of paragraph (2)(A), the term "exempt person" means—

(A) a governmental unit, or

(B) an organization described in section 501(c)(3) and exempt from tax under section 501(a) (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization).

(4) Certain exempt activities.

Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

(A) residential real property for family units,

(B) sports facilities,

(C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas,

(F) air or water pollution control facilities, or

(G) facilities for the furnishing of water, if available on reasonable demand to members of the general public.

(5) Industrial parks.

Paragraph (1) shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used for the acquisition or development of land as the site for an industrial park. For purposes of the preceding sentence, the term "development of land" includes the provision of water, sewage, drainage, or simi-

lar facilities, or of transportation, power, or communication facilities, which are incidental to use of the site as an industrial park, but, except wth respect to such facilities, does not include the provision of structures or buildings.

* * * * *

(Aug. 16, 1954, ch. 736, 68A Stat. 29; June 28, 1968, Pub. L. 90–364, title I, § 107(a), 82 Stat. 266; Oct. 24, 1968, Pub. L. 90–634, title IV, § 401(a), 82 Stat. 1349; Dec. 30, 1969, Pub. L. 91–172, title VI, § 601(a), 83 Stat. 656.)

(As amended Dec. 10, 1971, Pub. L. 92–178, title III, **§ 315 (a), (b), 85 Stat. 529; Pub. L. 94–455, §§ 1901 (17), 2105(a), Oct. 4, 1976, 90 Stat. 1765, 1902.)**

AMENDMENTS

1971—Subsec. (c)(4)(E). Pub. L. 92–178, § 315(a)(1). substituted "energy or gas," for "energy, gas, or water or".

Subsec. (c)(4)(F). Pub. L. 92–178, § 315(a)(2), substituted ", or" for a period.

Subsec. (c)(4)(G). Pub. L. 92–178, § 315(a)(3), added subpar. (G).

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (d) as (e).

1968—Subsec. (c). Pub. L. 90–364 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(6)(D)—(H). Pub. L. 90–634 added subsec. (c)(6)(D)—(H).

Subsec. (d). Pub. L. 90–364 redesignated former subsec. (c) as (d).

9. Revenue Sharing

31 U.S.C. 1221–1224

Sec.

§ 1221. Payments to State and local governments.

Except as otherwise provided in this chapter, the Secretary shall, for each entitlement period, pay out of the Trust Fund to—

(1) each State government a total amount equal to the entitlement of such State government determined under section 1226 of this title for such period, and

(2) each unit of local government a total amount equal to the entitlement of such unit determined under section 1227 of this title for such period.

In the case of entitlement periods ending after October 20, 1972, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subchapter were in excess of or less than the amounts required to be paid. (Pub. L. 92–512, title I, § 102, Oct. 20, 1972, 86 Stat. 919.)

§ 1222. Repealed. Pub. L. 94–488, § 3(a), Oct. 13, 1976, 90 Stat. 2341.

§ 1223. Repealed. Pub. L. 94–488, § 4(a), Oct. 13, 1976, 90 Stat. 2341.

§ 1224. Creation of Trust Fund; appropriations; authorizations for entitlements.

(a) Trust Fund.

(1) In general.

There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subchapter as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided **in subsection (b) or (c) of this section. Except as provided in this chapter, amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subchapter.**

(2) Trustee.

The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the **Congress not later than June 1 of each year** on the operation and status of the Trust Fund during the preceding fiscal year.

(b) Appropriations.

(1) In general.

There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,650,000,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,650,000,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,987,500,000;

(D) for the fiscal year beginning July 1, 1973, $6,050,000,000;

(E) for the fiscal year begining July 1, 1974, $6,200,000,000;

(F) for the fiscal year beginning July 1, 1975, $6,350,000,000; and

(G) for the period beginning July 1, 1976, and ending December 31, 1976, $3,325,000,000.

(2) Noncontiguous States adjustment amounts.

There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,390,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,390,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,390,000;

(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, $4,780,000; and

(E) for the period beginning July 1, 1976, and ending December 31, 1976, $2,390,000.

(3) Deposits.

Amounts appropriated by paragraph (1) or (2) for any fiscal year or other period shall be deposited in the Trust Fund on the later of (A) the first day of such year or period, or (B) October 21, 1972.

(c) Authorization of appropriations for entitlements.
(1) In general.

In the case of any entitlement period described in paragraph (3), there are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided for such entitlement period an amount equal to $6,650,000,000 times a fraction—

(A) The numerator of which is the amount of the Federal individual income taxes collected in the last calendar year ending more than one year before the end of such entitlement period, and

(B) the denominator of which is the amount of the Federal individual income taxes collected in the calendar year 1975.

The amount determined under this paragraph is not to exceed $6,850,000,000.

(2) Noncontiguous States adjustment amounts.

In the case of any entitlement period described in paragraph (3), there are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided for such entitlement period an amount equal to $4,780,000 times a fraction—

(A) the numerator of which is the amount of the Federal individual income taxes collected in the last calendar year ending more than one year before the end of such entitlement period, and

(B) the denominator of which is the amount of the Federal individual income taxes collected in the calendar year 1975.

The amount determined under this paragraph is not to exceed $4,923,759.

(3) Entitlement periods.

The following entitlement periods are described in this paragraph:

(A) The entitlement period beginning January 1, 1977, and ending September 30, 1977;

(B) The entitlement period beginning October 1, 1977, and ending September 30, 1978;

(C) The entitlement period beginning October 1, 1978, and ending September 30, 1979; and

(D) The entitlement period beginning October 1, 1979, and ending September 30, 1980.

(4) Short entitlement period.

In the case of an entitlement period of 9 months which follows an entitlement period of 6 months—

(A) the amount determined under paragraph (1) for such 9-month period shall be reduced by one-half the amount appropriated for such 6-month period under subsection (b)(1), and

(B) the amount determined under paragraph (2) for such entitlement period shall be reduced by one-half the amount appropriated for such 6-month entitlement period under subsection (b)(2).

(d) Transfers from Trust Fund to general fund.

The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subchapter. (Pub. L. 92–512, title I, § 105, Oct. 20, 1972, 86 Stat. 920; amended Pub. L. 94–273, § 12(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 94–488, § 5, Oct. 13, 1976, 90 Stat. 2341.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–488, § 5(a)(1) added "or (c)" following "as provided in subsection (b).

Subsec. (a)(2). Pub. L. 94–273, § 12(a) deleted "March" and substituted "June."

Subsec. (c) and (d). Pub. L. 94–488, § 5(a)(2) and (3), redesignated subsec. (c) as subsec. (d) and added a new subsec. (c), respectively.

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10. Special Rules for Determining Capital Gains and Losses

26 U.S.C. 1245, 1250

1245. Gain from dispositions of certain depreciable property.

* * * * *

1250. Gain from dispositions of certain depreciable realty.

* * * * *

§ 1245. Gain from dispositions of certain depreciable property.

(a) General rule.

(1) Ordinary income.

Except as otherwise provided in this section, if section 1245 property is disposed of during a taxable year beginning after December 31, 1962, the amount by which the lower of—

(A) the recomputed basis of the property, or

(B) (i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recomputed basis.

For purposes of this section, the term "recomputed basis" means—

(A) with respect to any property referred to in paragraph (3) (A) or (B), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961,

(B) with respect to any property referred to in paragraph (3) (C), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after June 30, 1963,

(C) with respect to livestock, its adjusted basis recomputed by adding thereto all adjustments attributable to periods after December 31, 1969, or

(D) with respect to any property referred to in paragraph (3) (D), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed **under section 169, 185, 190, or 191,**

reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 168, 169, 184, 185, **187, 188 190, or 191. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation, or for amortization under section 168, 169, 184, 185, 187, 188, 190, or 191, for any period was less than the amount allowable, the amount added for such period shall be the amount allowed. For purposes of this section, any deduction allowable under section 190 shall be treated as if it were a deduction allowable for amortization.**

(3) Section 1245 property.

For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in section 185) and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services,

(ii) constituted a research facility used in connection with any of the activities referred to in clause (i), or

(iii) constituted a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state),

(C) an elevator or an escalator, or

(D) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under **section 169, 185, 188, 190, or 191.**

* * * * *

(c) Adjustments to basis.

The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(d) Application of section.

This section shall apply notwithstanding any other provision of this subtitle. (Added Pub. L. 87–834, § 13(a)(1), Oct. 16, 1962, 76 Stat. 1032, and amended Pub. L. 88–272, title II, § 203(d), Feb. 26, 1964, 78 Stat. 35; Pub. L. 91–172, title II, § 212(a)(1), (2), title VII, § 704(b)(4), Dec. 30, 1969, 83 Stat. 571, 670.)

(As amended Pub. L. 92–178, title I, § 104(a)(2), **title III, § 303(c) (1), (2), 85 Stat. 501, 522; amended Pub. L. 94–455, §§ 2122(3) and 2124(2), Oct. 4, 1976, 90 Stat. 1915, 1917.)**

AMENDMENTS

1971—Subsec. (a)(2). Pub. L. 92–178, § 303(c)(1), included reference to section 188 in two instances following subpar. (D) text.

Subsec. (a)(3)(B) (ii), (iii). Pub. L. 92–178, § 104(a)(2), substituted "research facility" for "research or storage facility" in cl. (ii) and added cl. (iii).

Subsec. (a)(3)(D). Pub. L. 92–178, § 303(c)(2), included reference to section 188.

1969—Subsec. (a)(2). Pub. L. 91–172, §§ 212(a)(1), 704(b)(4)(A), (B), added subpar. (C) and inserted references to sections 169, 185, and 187, and added subpar. (D).

Subsec. (a)(3). Pub. L. 91–172, §§ 212(a)(2), 704(b)(4)(C)–(F), struck out "(other than livestock)" following "means any property" and substituted "section 167 (or subject to the allowance of amortization provided in section 185)" for "section 167" and added subpar. (D).

1964—Subsec. (a)(2), (3)(C). Pub. L. 88–272 redefined "recomputed basis" with respect to elevators or escalators in par. (2), and inserted subpar. (C) in par. (3).

§ 1250. Gain from dispositions of certain depreciable realty.

(a) General rule.

Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1975.

(A) IN GENERAL.—If section 1250 property is disposed of after December 31, 1975, then the applicable percentage of the lower of—

(i) that portion of the additional depreciation (as defined in subsection (b) (1) or (4)) attributable to periods after December 31, 1975, in respect of the property, or

(ii) the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term "applicable percentage" means—

(i) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(ii) in the case of dwelling units which, on the average, were held for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of State or local law authorizing similar levels of subsidy for lower-income families, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iii) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service;

(iv) in the case of section 1250 property with respect to which a loan is made or insured under title V of the Housing Act of 1949, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months; and

(v) in the case of all other section 1250 property, 100 percent.

In the case of a building (or a portion of a building devoted to dwelling units), if, on the average, 85 percent or more of the dwelling units contained in such building (or portion thereof) are units described in clause (ii), such building (or portion thereof) shall be treated as property described in clause (ii). Clauses (i), (ii), and (iv) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(2) Additional depreciation after December 31, 1969, and before January 1, 1976.

(A) IN GENERAL.—If section 1250 property is disposed of after December 31, 1969, and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods after December 31, 1969, and before January 1, 1976, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the amount determined under paragraph (1)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term "applicable percentage" means—

(i) in the case of section 1250 property disposed of pursuant to a written contract which was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(ii) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(iii) in the case of residential rental property (as defined in section 167(j)(2)(B)) other than that covered by clauses (i) and (ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iv) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and

(v) in the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(3) Additional depreciation before January 1, 1970.

(A) IN GENERAL.—If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(b) Additional depreciation defined.

For purposes of this section—

(1) In general.

The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment. For purposes of the preceding sentence, if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) shall be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

* * * * *

(3) Depreciation adjustments.

The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other **than amortization under section 168, 169, 185, 188, 190, or 191). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.**

(4) Additional depreciation attributable to rehabilitation expenditures.

The term "additional depreciation" also means, in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), the depreciation adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k).

(c) Section 1250 property.

For purposes of this section, the term "section 1250 property" means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, § 202, substantially revised this subsection.

1971—Subsec. (b)(3). Pub. L. 92–178 included reference to section 188.

1969—Subsec. (a). Pub. L. 91–172, § 521(b), modified the recapture rules pertaining to residential housing by allowing a 1 percent per month reduction in the amount to be recaptured as ordinary income after the property has been held for 100 full months, with other real property remaining subject to full recapture, applied the existing recapture rules where the sale of property was subject to a binding contract in existence prior to July 25, 1969, provided that changes in the recapture rules are not to apply in federally assisted projects (such as programs under section 221(d)(3) or 236 of the National Housing Act) or to other publicly assisted housing programs under which the return to the investor is limited on a comparable basis, thereby rendering these projects subject to a recapture of the depreciation in full if the sale occurs in the first 12 months and for a phaseout of the recapture of the excess of accelerated over straight-line depreciation after 20 months, the recapture being reduced at the rate of 1 percent per month until 120 months after which no recapture applies, with such recapture rules to continue to apply only with respect to such property constructed, reconstructed, or acquired before Jan. 1, 1975, and applied new recapture rules to depreciation attributable to periods after Dec. 31, 1969.

Subsec. (b). Pub. L. 91–172, § 512(c), added par. (4).

Subsec. (b)(3). Pub. L. 91–172, § 704(b)(5), inserted reference to sections 169 and 185 of this title.

Subsec. (d). Pub. L. 91–172, §§ 521(e)(1), 910(b)(1), substituted "subsection (a)" for "subsection (a)(1)" wherever it appears and added par. (8).

Subsec. (e). Pub. L. 91–172, § 910(b)(2), added par. (4).

Subsec. (f)(1). Pub. L. 91–172, § 521(e)(2)(A), substituted "subsection (a)" for "subsection (a)(1)".

Subsec. (f)(2). Pub. L. 91–172, § 521(e)(2)(B), redesignated subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), respectively, and, in such cls. (i) and (ii) as so redesignated, added reference to depreciation attributable to periods after Dec. 31, 1969, and added subpar. (B).

Subsec. (g). Pub. L. 91–172, § 910(b)(3), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 91–172, § 910(b)(3), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91–172, § 910(b)(3), redesignated former subsec. (h) as (i).

11. Water Pollution Control in Appalachia

40 App. U.S.C. 1–2, 203, 205–206, 212

Sec.
1. Short title.
2. Findings and statement of purpose.

* * * * *

203. Land stabilization, conservation, and erosion control.

* * * * *

205. Mining area restoration.
206. Water resource survey.

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212. Sewage treatment works.

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§ 1. Short title.

This Act may be cited as the "Appalachian Regional Development Act of 1965".

SHORT TITLE OF 1975 AMENDMENT

Section 101 of Pub. L. 94–188, title I, Dec. 31, 1975, 89 Stat. 1079, provided that: "This title [which enacted sections 225 and 303 of this Appendix, amended sections 2, 101, 102, 105 to 107, 201, 202, 205, 207, 211, 214, 223, 224, 302, 401, and 405 of this Appendix, repealed section 3134 of Title 42, and enacted provisions set out as notes under sections 2 and 201 of this Appendix] may be cited as the 'Appalachian Regional Development Act Amendments of 1975'."

§ 2. Findings and statement of purpose.

(a) The Congress hereby finds and declares that the Appalachian region of the United States, while abundant in natural resources and rich in potential, lags behind the rest of the Nation in its economic growth and that its people have not shared properly in the Nation's prosperity. The region's uneven past development, with its historical reliance on a few basic industries and a marginal agriculture, has failed to provide the economic base that is a vital prerequisite for vigorous, self-sustaining growth. The State and local governments and the people of the region understand their problems and have been working and will continue to work purposefully toward their solution. The Congress recognizes the comprehensive report of the President's Appalachian Regional Commission documenting these findings and concludes that regionwide development is feasible, desirable, and urgently needed. It is, therefore, the purpose of this Act to assist the region in meeting its special problems, to promote its economic development, and to establish a framework for joint Federal and State efforts toward providing the basic facilities essential to its growth and attacking its common problems and meeting its common needs on a coordinated and concerted regional basis. The public investments made in the region under this Act shall be concentrated in areas where there is a significant potential for future growth, and where the expected return on public dollars invested will be the greatest. The States will be responsible for recommending local and State projects, within their borders, which will receive assistance under this Act. As the region obtains the needed physical and transportation facilities and develops its human resources, the Congress expects that the region will generate a diversified industry, and that the region will then be able to support itself, through the workings of a strengthened free enterprise economy.

(b) The Congress further finds and declares that while substantial progress has been made toward achieving the foregoing purposes, especially with respect to the provision of essential public facilities, much remains to be accomplished, especially with respect to the provision of essential health, education, and other public services. The Congress recognizes that changes and evolving national purposes in the decade since 1965 affect not only the Appalachian region, but also its relationship to a nation now assigning higher priority to conservation and the quality of life, values long cherished within the region. Appalachia now has the opportunity, in accommodating future growth and development, to demonstrate local leadership and coordinated planning so that housing, public services, transportation and other community facilities will be provided in a way congenial to the traditions and beauty of the region and compatible with conservation values and an enhanced quality of life for the people of the region. The Congress recognizes also that fundamental changes are occurring in national energy requirements and production, which not only risk short-term dislocations but will undoubtedly result in major long-term effects in the region. It is essential that the opportunities for expanded energy production be used so as to maximize the social and economic benefits and minimize social and environmental costs to the region and its people. It is, therefore, also the purpose of this Act to provide a framework for coordinating Federal, State and local efforts toward (1) anticipating the effects of alternative energy policies and practices, (2) planning for accompanying growth and change so as to maximize the social and economic benefits and minimize social and environmental costs, and (3) implementing programs and projects carried out in the region by Federal, State, and local governmental agencies so as to better meet the special problems generated in the region by the Nation's energy needs and policies, including problems of transportation, housing, community facilities, and human services. (As amended Pub. L. 94–188, title I, § 102, Dec. 31, 1975, 89 Stat. 1079.)

AMENDMENTS

1975—Pub. L. 94–188 designated existing provisions as subsec. (a), and added subsec. (b).

REPORT TO CONGRESS ON PROGRESS MADE IN THE IMPLEMENTATION OF THE REGIONAL DEVELOPMENT ACT OF 1975

Section 122(b) of Pub. L. 94–188 provided that: "The Appalachian Regional Commission shall submit to Congress by July 1, 1977, a report on the progress being made on implementing section 2(b) of the Appalachian Regional Development Act of 1965 [subsec. (b) of this section] the energy related enterprise development demonstration authority in section 302 of such Act [section 302 of this Appendix], and other amendments made by this title [see section 101 of Pub. L. 94–188, set out as Short Title note under section 1 of this Appendix]."

* * * * *

§ 203. Land stabilization, conservation, and erosion control.

(a) In order to provide for the control and prevention of erosion and sediment damages in the Appalachian region and to promote the conservation and development of the soil and water resources of the region, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners, operators, and occupiers, individually or collectively, in the Appalachian region determined by him to have control for the period of the agreement of the lands described therein, providing for land stabilization, erosion and sediment control, and reclamation through changes in land use, and conservation treatment including the establishment of practices and measures for the conservation and development of soil, water, woodland, wildlife, and recreation resources.

(b) The landowner, operator, or occupier shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the appropriate and safe land uses and conservation treatment mutually agreed by the Secretary and the landowner operator, or occupier to be needed on the lands for which the plan was prepared.

(c) Such plan shall be incorporated in an agreement under which the landowner, operator, or occupier shall agree with the Secretary of Agriculture to carry out the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

(d) In return for such agreement by the landowner, operator, or occupier the Secretary of Agriculture shall be authorized to furnish financial and other assistance to such landowner, operator, or occupier in such amounts and subject to such conditions as the Secretary determines are appropriate and in the public interest for the carrying out of the land uses and conservation treatment set forth in the agreement: *Provided*, That grants hereunder shall not exceed 80 per centum of the cost of carrying out such land uses and conservation treatment on fifty acres of land occupied by such owner, operator, or occupier.

(e) The Secretary of Agriculture may terminate any agreement with a landowner, operator or occupier by mutual agreement if the Secretary determines that such termination would be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

(f) Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

(g) The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

(h) In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Soil Conservation Service, and the State and local committees provided for in section 8(b) of the Soil Conservation and Domestic Allotment Act, and is authorized to utilize the facilities, services, and authorities of the Commodity Credit Corporation. The Corporation shall not make any expenditures to carry out the provisions of this subsection unless funds specifically appropriated for such purpose have been transferred to it.

(i) Not to exceed $19,000,000 of the funds authorized in section 401 of this Act for the two-fiscal-year period ending June 30, 1969, shall be available to carry out this section .(As amended Pub. L. 90–103, title I, § 108, Oct. 11, 1967, 81 Stat. 260.)

REFERENCES IN TEXT

Section 8(b) of the Soil Conservation and Domestic Allotment Act, referred to in subsec. (h), is classified to section 590h(b) of Title 16, Conservation.

AMENDMENTS

1967—Subsec. (i). Pub. L. 90–103 substituted provisions for availability of $19,000,000 for two-fiscal-year period ending June 30, 1969, for former provisions for availability of $17,000,000 for period ending June 30, 1967, as provided in former provisions of section 401 of the Act.

* * * * *

§ 205. Mining area restoration.

(a) In order to further the economic development of the region by rehabilitating areas presently damaged by deleterious mining practices, the Secretary of the Interior is authorized to—

(1) make financial contributions to States in the region to seal and fill voids in abandoned coal mines and abandoned oil and gas wells, and to reclaim and rehabilitate lands affected by the strip and surface mining and processing of coal and other minerals, including lands affected by waste piles, in accordance with provisions of the Act of July 15, 1955 to the extent applicable, without regard to section 2(b) thereof or to any provisions therein limiting assistance to anthracite coal formation, or to the Commonwealth of Pennsylvania; to control and abate mine drainage pollution; and for planning or engineering for any such activities. Grants under this paragraph shall be made wholly out of funds specifically appropriated for the purposes of carrying out this Act.

(2) plan and execute projects for planning, engineering, or extinguishing underground and outcrop mine fires in the region or to make grants to the States for carrying out such projects, in accordance with the applicable provisons of the Act of August 31, 1954, without regard to any provisions therein relating in annual appropriation authorization ceilings. Grants under this paragraph shall be made solely out of funds specifically appropriated for the purpose of carrying out this Act.

(b) Notwithstanding any other provision of law, the Federal share of mining area restoration project

costs carried out under subsection (a) of this section and conducted on lands other than federally owned lands shall not exceed 75 per centum of the total cost thereof. For the purposes of this section, such project costs may include the reasonable value (including donations) of planning, engineering, real property acquisition (limited to the reasonable value of the real property in its unreclaimed state and costs incidental to its acquisition, as determined by the Commission), and such other materials (including, but not limited to, sand, clay, stone, culm, rock, spoil bank and noncombustible materials) and services as may be required for such project.

(c) Whenever a State, local government, or other nonprofit applicant agrees to indemnify the Federal Government, or its officers, agents, or employees, for all claims of loss or damage resulting from the use and occupation of lands for a project assisted under this section, the Secretary may waive all requirements for the submission of releases, consents, waivers, or similar instruments respecting such lands, but the Secretary may require security as he deems appropriate for any such indemnification agreement.

(d) No moneys authorized by this Act shall be expended for the purposes of reclaiming, improving, grading, seeding, or reforestation of strip-mined areas, except on lands owned by Federal, State, or local government bodies or by private nonprofit entities organized under State law to be used for public recreation, conservation, community facilities, or public housing. (As amended Pub. L. 92–65, title II, § 207, Aug. 5, 1971, 85 Stat. 169; Pub. L. 94–188, title I, § 112, Dec. 31, 1975, 89 Stat. 1081.)

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94–188, § 112(1), authorized the Secretary of the Interior to plan and engineer the activities enumerated in this subsection.

Subsec. (a)(2). Pub. L. 94–188, § 112(2), substituted "execute projects for planning, engineering, or extinguishing" for "execute projects for extinguishing".

Subsec. (b). Pub. L. 94–188, § 112(3), substituted "other materials (including, but not limited to, sand, clay, stone, culm, rock, spoil bank and noncombustible materials) and services" for "other materials and services".

Subsec. (c). Pub. L. 94–188, § 112(4), substituted provisions relating to indemnification agreements for provisions relating to study and recommendations for reclamation and rehabilitation of strip and surface mining areas.

Subsec. (d). Pub. L. 94–188, § 112(5), eliminated authorization of appropriation for the two-fiscal-year period ending June 30, 1969 and substituted provisions that the moneys be used for public recreation, conservation, community facilities, or public housing for provisions that the moneys may not be used until authorized by law after completion of the study and report to the President as provided in subsec. (c) of this section.

1971—Subsec. (a)(1). Pub. L. 92–65, § 207(a), added provisions authorizing contributions to control or abate mine drainage pollution.

Subsec. (b). Pub. L. 92–65, § 207(b), deleted fiscal year limitation, and extended the existing 75–25 Federal-State cost sharing ratio for restoration projects, and substituted new formula for the computation of costs.

§ 206. Water resource survey.

(a) The Secretary of the Army is hereby authorized and directed to prepare a comprehensive plan for the development and efficient utilization of the water and related resources of the Appalachian region, giving special attention to the need for an increase in the production of economic goods and services within the region as a means of expanding economic opportunities and thus enhancing the welfare of its people, which plan shall constitute an integral and harmonious component of the regional economic development program authorized by this Act.

(b) This plan may recommend measures for the control of floods, the regulation of the rivers to enhance their value as sources of water supply for industrial and municipal development, the generation of hydroelectric power, the prevention of water pollution by drainage from mines, the development and enhancement of the recreational potentials of the region, the improvement of the rivers for navigation where this would further industrial development at less cost than would the improvement of other modes of transportation, the conservation and efficient utilization of the land resource, and such other measures as may be found necessary to achieve the objectives of this section.

(c) To insure that the plan prepared by the Secretary of the Army shall constitute a harmonious component of the regional program, he shall consult with the Commission and the following: the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Secretary of the Interior, Secretary of Transportation, the Tennessee Valley Authority, and the Federal Power Commission.

(d) The plan prepared pursuant to this section shall be submitted to the Commission. The Commission shall submit the plan to the President with a statement of its views, and the President shall submit the plan to the Congress with his recommendations not later than December 31, 1968.

(e) The Federal agencies referred to in subsection (c) of this section are hereby authorized to assist the Secretary of the Army in the preparation of the plan authorized by this section, and the Secretary of the Army is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to the preparation of this plan and on such terms as he may deem appropriate, with any department, agency, or instrumentality of the United States or with any State, or any political subdivision, agency, or instrumentality thereof, or with any person, firm, association, or corporation.

(f) The plan to be prepared by the Secretary of the Army pursuant to this section shall also be coordinated with all comprehensive river basin plans heretofore or hereafter developed by United States study commissions, interagency committees, or similar planning bodies, for those river systems draining the Appalachian region.

(g) Not to exceed $2,000,000 of the funds authorized in section 401 of this Act for the two-fiscal-year period ending June 30, 1969, shall be available to carry out this section. (As amended Pub. L. 89–670, § 8(c), Oct. 15, 1966, 80 Stat. 943; Pub. L. 90–103, title I, § 111, Oct. 11, 1967, 81 Stat. 261.)

AMENDMENTS

1967—Subsec. (g). Pub. L. 90–103 substituted provisions for availability of $2,000,000 for two-fiscal-year period ending June 30, 1969, for former provisions for

availability of $5,000,000 for period ending June 30, 1967, as provided in former provisions of section 401 of the Act.

1966—Subsec. (c). Pub. L. 89–670 added the Secretary of Transportation to the list of officers with whom the Secretary of the Army is required to consult.

* * * * *

§ 212. Sewage treatment works.

(a) In order to provide facilities to assist in the prevention of pollution of the region's streams and to protect the health and welfare of its citizens, the Administrator of the Environmental Protection Agency is authorized to make grants for the construction of sewage treatment works in accordance with the provisions of the Federal Water Pollution Control Act, without regard to any provisions therein relating to appropriation authorization ceilings or to allotments among the States. Grants under this section shall be made solely out of funds specifically appropriated for the purpose of carrying out this Act, and shall not be taken into account in the computation of the allotments among the States pursuant to any other provision of law.

(b) Not to exceed $6,000,000 of the funds authorized in section 401 of this Act for the two-fiscal-year period ending June 30, 1969, shall be available to carry out this section. (As amended Pub. L. 90–103, title I, § 114, Oct. 11, 1967, 81 Stat. 262.)

AMENDMENTS

1957—Subsec. (b). Pub. L. 90–103 substituted provisions for availability of $6,000,000 for two-fiscal-year period ending June 30, 1969, for former provisions for availability of $6,000,000 for period ending June 30, 1967, as provided in former provisions of section 401 of the Act.

TITLE X—RADIATION HAZARDS

1. Atomic Energy, Development and Control

42 U.S.C. 2011–2277 (various sections)

SUBCHAPTER I.—GENERAL PROVISIONS

§ 2011. Congressional declaration of policy.

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

(a) the development, use, and control of atomic energy shall be directed so as to make the maximum

contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

(b) the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise. (Aug. 1, 1946, ch. 724, § 1, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921.)

SHORT TITLE

Section 291 of act Aug. 1, 1946, as added by act Aug. 30, 1954, § 1, provided that the enactment of this chapter, and amendments to former sections 1031(d) and 1032 of Title 5, should be popularly known as the "Atomic Energy Act of 1954."

SEPARABILITY OF PROVISIONS

Section 281 of act Aug. 1, 1946, as added by act Aug. 30, 1954, § 1, provided that: "If any provision of this Act [this chapter] or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act [this chapter] or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1 of act Aug. 1, 1946, ch. 724, 60 Stat. 755 (formerly classified to section 1801 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954.

§ 2012. Congressional findings.

The Congress of the United States makes the following findings concerning the development, use, and control of atomic energy:

(a) The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.

(b) Repealed. Pub. L. 88–489, § 1, Aug. 26, 1964, 78 Stat. 602.

(c) The processing and utilization of source, byproduct, and special nuclear material affect interstate and foreign commerce and must be regulated in the national interest.

(d) The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.

(e) Source and special nuclear material, production facilities, and utilization facilities are affected with the public interest, and regulation by the United States of the production and utilization of atomic energy and of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public.

(f) The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this chapter.

(g) Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

(h) Repealed. Pub. L. 88–489, § 2, Aug. 26, 1964, 78 Stat. 602.

(i) In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses. (Aug. 1, 1946, ch. 724, § 2, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended Sept. 2, 1957, Pub. L. 85–256, § 1, 71 Stat. 576; Aug. 26, 1964, Pub. L. 88–489, §§ 1, 2, 78 Stat. 602.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–489, § 1, eliminated subsec. (b) which found that the use of the United States property by others must be regulated in the national interest and in order to provide for common defense and security and to protect the health and safety of the public.

Subsec. (h). Pub. L. 88–489, § 2, eliminated subsec. (h) which found it essential to the common defense and security that title to all special nuclear material be in the United States while such special nuclear material is within the United States.

1957—Subsec. (i). Pub. L. 85–256 added subsec. (i).

SHORT TITLE OF 1964 AMENDMENT

Section 21 of Pub. L. 88–489 provided that Pub. L. 88–489, amending this section, and sections 2013, 2073—2078, 2135, 2153, 2201, 2221, 2233 and 2234 of this title, repealing section 2072 of this title, and enacting provisions set out as noted under this section and former section 2072 of this title, may be cited as the "Private Ownership of Special Nuclear Materials Act."

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1 of act Aug. 1, 1946, ch. 724, 60 Stat. 755 (formerly classified to section 1801 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954.

CONTROL AND REGULATION POWERS OF UNITED STATES AND OF ATOMIC ENERGY COMMISSION UNAFFECTED BY PRIVATE OWNERSHIP OF SPECIAL NUCLEAR MATERIALS

Section 20 of Pub. L. 88–489 provided that: "Nothing in this Act [amending this section, and sections 2013, 2073—2078, 2135, 2153, 2201, 2233 and 2234 of this title, repealing section 2072 of this title, and enacting provisions set out as notes under this section and former section 2072 of this title] shall be deemed to diminish existing authority of the United States, or of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended [this chapter], to regulate source, byproduct, and special nuclear material and production and utilization facilities, or to control such materials and facilities exported from the United States by imposition of governmental guarantees and security safeguards with respect thereto, in order to assure the common defense and security and to protect the health and safety of the public, or to reduce the responsibility of the Atomic Energy Commission to achieve such objectives."

§ 2013. Purpose of chapter.

It is the purpose of this chapter to effectuate the policies set forth above by providing for—

(a) a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

(b) a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

(c) a program for Government control of the possession, use, and production of atomic energy and

special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons;

(d) a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

(e) a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

(f) a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate. (Aug. 1, 1946, ch. 724, § 3, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 922, and amended Aug. 26, 1964, Pub. L. 88-489, § 3, 78 Stat. 602.)

AMENDMENTS

1964—Subsec. (c). Pub. L. 88-489 inserted "whether owned by the Government or others" and "and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons."

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1 of act Aug. 1, 1946, ch. 724, 60 Stat. 755 (formerly classified to section 1801 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954.

§ 2014. Definitions.

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter:

* * * * *

(c) The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

* * * * *

(e) The term "byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

* * * * *

(j) The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Commission that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Commission shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Commission indemnity agreement, entered into pursuant to section 2210 of this title.

(k) The term "financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

* * * * *

(m) The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Commission with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 2210 of this title.

* * * * *

(o) The term "Joint Committee" means the Joint Committee on Atomic Energy.

(p) The term "licensed activity" means an activity licensed pursuant to this chapter and covered by the provisions of section 2210(a) of this title.

(q) The term "nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however*, That as the term is used in section 2210(*l*) of this title, it shall include any such occurrence outside the United States: *And provided further*, That as the term is used in section 2210(d) of this title, it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further*, That as the term is used in section 2210(c) of this title, it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to subchapters V, VI, VII, and IX of this chapter, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Commission to another person licensed by the Commission.

* * * * *

(t) The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 2210(c) of this title, and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of section 2210(d) of this title has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

* * * * *

(v) The term "production facility" means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

(w) The term "public liability" means any legal liability arising out of or resulting from a nuclear incident, except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in section 2210(a), (c), and (k) of this title, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

(x) The term "research and development" means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

* * * * *

(z) The term "source material" means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

(aa) The term "special nuclear material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

* * * * *

(cc) The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. (Aug. 1, 1946, ch. 724, § 11, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 922, and amended Aug. 6, 1956, ch. 1015, § 1, 70 Stat. 1069; Sept. 2, 1957, Pub. L. 85–256, § 3, 71 Stat. 576; Aug. 8, 1958, Pub. L. 85–602, § 1, 72 Stat. 525; Sept. 6, 1961, Pub. L. 87–206, §§ 2, 3, 75 Stat. 476; Aug. 29, 1962, Pub. L. 87–615, §§ 4, 5, 76 Stat. 410; Oct. 13, 1966, Pub. L. 89–645, § 1(a), 80 Stat. 891; Dec. 31, 1975, Pub. L. 94–197, § 1, 89 Stat. 1111.)

* * * * *

§ 2021. Cooperation with States.

(a) Purpose.

It is the purpose of this section—

(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

(b) Agreements with States.

Except as provided in subsection (c) of this sec-

tion, the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under subchapters V, VI, and VII of this chapter, and section 2201 of this title, with respect to any one or more of the following materials within the State—

(1) byproduct materials;

(2) source materials;

(3) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

(c) Commission regulation of certain activities.

No agreement entered into pursuant to subsection (b) of this section shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

(1) the construction and operation of any production or utilization facility;

(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

Notwithstanding any agreement between the Commission and any State pursuant to subsection (b) of this section, the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

(d) Conditions.

The Commission shall enter into an agreement under subsection (b) of this section with any State if—

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

(e) Publication in Federal Register; comment of interested persons.

(1) Before any agreement under subsection (b) of this section is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection (f) of this section shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

(f) Exemptions.

The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in subchapters V, VI, and VII of this chapter, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection (b) of this section.

(g) Compatible radiation standards.

The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

(h) Consultative, advisory and miscellaneous functions of the Administrator of the Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings with, participate in the deliberations of, and to advise the Administrator. The Administrator shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Administrator shall also perform such other functions as the President may assign to him by Executive order.

(i) Inspections and other functions; training and other assistance.

The Commission in carrying out its licensing and regulatory responsibilities under this chapter is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any

State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection (b) of this section.

(j) Reserve power to terminate or suspend agreements.

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection (b) of this section has become effective, or upon request of the Governor of such State, may terminate or suspend its agreement with the State and reassert the licensing and regulatory authority vested in it under this chapter, if the Commission finds that such termination or suspension is required to protect the public health and safety.

(k) State regulation of activities for certain purposes.

Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

(l) Commission regulated activities; notice of filing; hearing.

With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection (c) of this section, the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

(m) Limitation of agreements and exemptions.

No agreement entered into under subsection (b) of this section, and no exemption granted pursuant to subsection (f) of this section, shall affect the authority of the Commission under section 2201 (b) or (i) of this title to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of section 2201(i) of this title, activities covered by exemptions granted pursuant to subsection (f) of this section shall be deemed to constitute activities authorized pursuant to this chapter; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 2073 of this title.

(n) Definition.

As used in this section, the term State means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. (Aug. 1, 1946, ch. 724, § 274, as added Sept. 23, 1959, Pub. L. 86–373, § 1, 73 Stat. 688, and amended 1970 Reorg. Plan No. 3, §§ 2(a)(7), 6(2), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —.)

* * * * *

§ 2051. Research assistance; fields covered; conditions.

(a) The Commission is directed to exercise its powers in such manner as to insure the continued conduct of research and development and training activities in the fields specified below, by private or public institutions or persons, and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in such fields. To this end the Commission is authorized and directed to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities relating to—

(1) nuclear processes;

(2) the theory and production of atomic energy, including processes, materials, and devices related to such production;

(3) utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy;

(5) the protection of health and the promotion of safety during research and production activities; and

(6) the preservation and enhancement of a viable environment by developing more efficient methods to meet the Nation's energy needs.

(b) The Commission is further authorized to make grants and contributions to the cost of construction and operation of reactors and other facilities and other equipment to colleges, universities, hospitals, and eleemosynary or charitable institutions for the conduct of educational and training activities relating to the fields in subsection (a) of this section.

(c) The Commission may (1) make arrangements pursuant to this section, without regard to the provisions of section 5 of Title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable; (2) make partial and advance payments under such arrangements; and (3) make available for use in connection therewith such of its equipment and facilities as it may deem desirable.

(d) The arrangements made pursuant to this section shall contain such provisions (1) to protect health, (2) to minimize danger to life or property, and (3) to require the reporting and to permit the inspection of work performed thereunder, as the Commission may determine. No such arrangement shall contain any provisions or conditions which prevent the dissemination of scientific or technical information, except to the extent such dissemination is prohibited by law. (Aug. 1, 1946, ch. 724, § 31, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 927, and amended Aug. 6, 1956, ch. 1015, §§ 2, 3, 70 Stat. 1069; Dec. 19, 1970, Pub. L. 91–560, § 1, 84 Stat. 1472.)

(As amended Aug. 11, 1971, Pub. L. 92–84, title II, § 201(a), 85 Stat. 307.)

AMENDMENTS

1971—Subsec. (a)(6). Pub. L. 92–84 added subsec. (a)(6).

1970—Subsec. (a)(4). Pub. L. 91–560 added commercial uses as an additional purpose and substituted "demonstration of advances in the commercial or industrial application of atomic energy" for "demonstration of the practical value of utilization or production facilities for industrial or commercial purposes".

1956—Subsec. (a). Act Aug. 6, 1956, § 2, inserted the words "and training" after the word "development" in the first sentence.

Subsec. (b). Act Aug. 6, 1956, § 3, added subsec. (b) and redesignated former subsecs. (b) and (c), as subsecs. (c) and (d).

Subsecs. (c) and (d). Act Aug. 6, 1956, § 3, redesignated former subsecs. (b) and (c) as (c) and (d).

§ 2052. Research by the Commission.

The Commission is authorized and directed to conduct, through its own facilities, activities and studies of the types specified in section 2051 of this title. (Aug. 1, 1946, ch. 724, § 32, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 928.)

§ 2053. Same; research for others; charges.

Where the Commission finds private facilities or laboratories are inadequate for the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 2051 of this title as it deems appropriate to the development of energy. To the extent the Commission determines that private facilities or laboratories are inadequate for the purpose, and that the Commission's facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission's own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section. (As amended Aug. 11, 1971, Pub. L. 92–84, title II, § 201(b), 85 Stat. 307.)

AMENDMENTS

1971—Pub. L. 92–84 substituted provisions authorizing the Commission to conduct research for other persons for the development of energy, for provisions authorizing the Commission to conduct research for other persons for the development of atomic energy.

1967—Pub. L. 90–190 added the provision which authorized the Commission, to the extent the Commission made certain determinations, to assist other persons on the fields of protection of public health and safety by conducting for such persons, through the facilities of the Commission, research and development or training activities and studies, and substituted "the activities and studies referred to in this section" for "such activities and studies".

SUBCHAPTER IV.—PRODUCTION OF SPECIAL NUCLEAR MATERIAL

§ 2061. Production facilities.

(a) Ownership.

The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 2051 of this title, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; or (2) are licensed by the Commission pursuant to section 2133 or 2134 of this title.

(b) Operation of Commission's facilities.

The Commission is authorized and directed to produce or to provide for the production of special nuclear material in its own production facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce special nuclear material in facilities owned by the Commission. The Commission is also authorized to enter into research and development contracts authorizing the contractor to produce special nuclear material in facilities owned by the Commission to the extent that the production of such special nuclear material may be incident to the conduct of research and development activities under such contracts. Any contract entered into under this section shall contain provisions (1) prohibiting the contractor from subcontracting any part of the work he is obligated to perform under the contract, except as authorized by the Commission; and (2) obligating the contractor (A) to make such reports pertaining to activities under the contract to the Commission as the Commission may require, (B) to submit to inspection by employees of the Commission of all such activities, and (C) to comply with all safety and security regulations which may be prescribed by the Commission. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 5 of Title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under such contracts.

(c) Operation of other facilities.

Special nuclear material may be produced in the facilities which under this section are not required to be owned by the Commission. (Aug. 1, 1946, ch. 724, § 41, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921 and amended Dec. 14, 1967, Pub. L. 90–190, § 8, 81 Stat. 577.)

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–190 struck out the provision requiring the President to determine in writing at least once each year the quantities of special nuclear material to be produced under this section, and to specify in such determination the quantities of special nuclear material to be available for distribution by the Commission pursuant to sections 2073 and 2074 of this title.

§ 2062. Irradiation of materials.

The Commission and persons lawfully producing or utilizing special nuclear material are authorized to expose materials of any kind to the radiation incident to the processes of producing or utilizing special nuclear material. (Aug. 1, 1946, ch. 724, § 42, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 929.)

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SUBCHAPTER V.—SPECIAL NUCLEAR MATERIAL

PRIOR PROVISIONS

Provisions similar to those comprising this subchapter were contained in section 5 of act Aug. 1, 1946, ch. 724, 60 Stat. 760 (formerly classified to section 1805 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

CROSS REFERENCES

Agreements with States for discontinuance of Commission regulation of certain materials under this subchapter and exemptions from licensing requirements therein contained, see section 2021 (b) and (f) of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2021 of this title.

§ 2071. Determination of other material as special nuclear material; Presidential assent; effective date.

The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Joint Committee, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period. (Aug. 1, 1946, ch. 724, § 51, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 929.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2201 of this title.

* * * * *

§ 2073. Domestic distribution of special nuclear material.

(a) Licenses.

The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 2051 of this title;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 2134 of this title;

(3) for use under a license issued pursuant to section 2133 of this title;

(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this chapter.

(b) Minimum criteria for licenses.

The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of special nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the special nuclear material to be distributed;

(2) the quantities of special nuclear material to be distributed; and

(3) the intended use of the special nuclear material to be distributed.

(c) Manner of distribution; charges for material sold; agreements; charges for material leased.

(1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, grant, or through the provision of production or enrichment services: *Provided, however,* That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale or through the provision of production or enrichment services to any person who possesses or operates a utilization facility under a license issued pursuant to section 2133 or 2134(b) of this title for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

(2) The Commission shall establish reasonable sales prices for the special nuclear material licensed and distributed by sale under this section. Such sales prices shall be established on a nondiscriminatory basis which, in the opinion of the Commission, will provide reasonable compensation to the Government for such special nuclear material.

(3) The Commission is authorized to enter into agreements with licensees for such period of time as the Commission may deem necessary or desirable to distribute to such licensees such quantities of special nuclear material as may be necessary for the conduct of the licensed activity. In such agreements, the Commission may agree to repurchase any special nuclear material licensed and distributed by sale which is not consumed in the course of the licensed activity, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission.

(4) The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distrib-

uted by lease under subsection (a) (1), (2) or (4) of this section and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed by lease under subsection (a)(3) of this section. The Commission shall establish criteria in writing for the determination of whether special nuclear material will be distributed by grant and for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed by lease under subsection (a) (1), (2) or (4) of this section, considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used!

(d) Determination of charges.

In determining the reasonable charge to be made by the Commission for the use of special nuclear material distributed by lease to licensees of utilization or production facilities licensed pursuant to section 2133 or 2134 of this title, in addition to consideration of the cost thereof, the Commission shall take into consideration—

(1) the use to be made of the special nuclear material;

(2) the extent to which the use of the special nuclear material will advance the development of the peaceful uses of atomic energy;

(3) the energy value of the special nuclear material in the particular use for which the license is issued;

(4) whether the special nuclear material is to be used in facilities licensed pursuant to section 2133 or 2134 of this title. In this respect, the Commission shall, insofar as practicable, make uniform, nondiscriminatory charges for the use of special nuclear material distributed to facilities licensed pursuant to section 2133 of this title; and

(5) with respect to special nuclear material consumed in a facility licensed pursuant to section 2133 of this title, the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection (c)(2) of this section, and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 2134 of this title.

(e) License conditions.

Each license issued pursuant to this section shall contain and be subject to the following conditions—

(1) Repealed. Pub. L. 88–489, § 8, Aug. 26, 1964, 78 Stat. 604.

(2) no right to the special nuclear material shall be conferred by the license except as defined by the license;

(3) neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter;

(4) all special nuclear material shall be subject to the right of recapture or control reserved by section 2138 of this title and to all other provisions of this chapter;

(5) no special nuclear material may be used in any utilization or production facility except in accordance with the provisions of this chapter;

(6) special nuclear material shall be distributed only on terms, as may be established by rule of the Commission, such that no user will be permitted to construct an atomic weapon;

(7) special nuclear material shall be distributed only pursuant to such safety standards as may be established by rule of the Commission to protect health and to minimize danger to life or property; and

(8) except to the extent that the indemnification and limitation of liability provisions of section 2210 of this title apply, the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

(f) Distribution for independent research and development activities.

The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable. In the event that applications for special nuclear material exceed the amount available for distribution, preference shall be given to those activities which are most likely, in the opinion of the Commission, to contribute to basic research, to the development of peacetime uses of atomic energy, or to the economic and military strength of the Nation. (Aug. 1, 1946, ch. 724, § 53, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 930, and amended Sept. 2, 1957, Pub. L. 85–256, § 2, 71 Stat. 576; Aug. 19, 1958, Pub. L. 85–681, §§ 1, 2, 72 Stat. 632; Aug. 26, 1964, Pub. L. 88–489, §§ 5–8, 78 Stat. 603, 604; Dec. 14, 1967, Pub. L. 90–190, §§ 9, 10, 81 Stat. 577.)

AMENDMENTS

1967—Subsec. (c)(1). Pub. L. 90–190, § 10, added "or through the provision of production or enrichment services" wherever appearing.

Subsec. (f). Pub. L. 90–190, § 9, struck out the reference to the limitations on the distribution of special nuclear materials set by the President in determinations made pursuant to section 2061 of this title.

1964—Subsec. (a). Pub. L. 88–489, § 5, substituted "(1) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii)" for "to issue licenses for the possession of, to make available for the period of the license, and."

Subsec. (c). Pub. L. 88–489, § 6, designated existing provisions as par. (4), inserted "by lease" wherever appearing and "special nuclear material will be distributed by grant and for the determination of whether" therein, and added pars. (1)—(3).

Subsec. (d). Pub. L. 88–489, § 7, inserted "by lease" in the introductory provisions, and in ch. (5) substituted "equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection (c)(2) of this section, and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 2134 of this title" for "based on the cost to the Commission, as estimated by the Commission, or the average fair price paid for the production of such special nuclear material as determined by section 2076 of this title, whichever is lower."

Subsec. (e)(1). Pub. L. 88–489, § 8, deleted par. (1) which provided that title to all special nuclear material shall at all times be in the United States.

1958—Subsec. (a)(4). Pub. L. 85–681, § 1 added subsec. (a)(4).

Subsec. (c). Pub. L. 85–681, § 2, substituted "subsections (a) (1), (2) or (4)" for "subsection (a)(1) or (a)(2)".

1957—Subsec. (e)(8). Pub. L. 85–256 inserted "except to the extent that the indemnification and limitation of liability provisions of section 2210 of this title apply,".

CROSS REFERENCES

Nonprofit educational institution exempt from financial protection requirement, see section 2210 (k) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2076, 2077, 2078, 2153, 2183, 2201, 2210, 2282 of this title.

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§ 2077. Unauthorized dealings in special nuclear material.

(a) Handling by persons.

Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 2073 of this title, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

(b) Production by persons.

It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) under an agreement for cooperation made pursuant to section 2153 of this title, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States.

(c) Distribution by Commission.

The Commission shall not—

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 2074 of this title; or

(2) distribute any special nuclear material or issue a license pursuant to section 2073 of this title to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

(Aug. 1, 1946, ch. 724, § 57, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932, and amended Aug. 26, 1964, Pub. L. 88–489, § 12, 78 Stat. 605.)

AMENDMENTS

1964—Pub. L. 88–489 amended section generally, and among other changes, included all special nuclear materials within the section, eliminated the condition that such material be "the property of the United States", included delivery, acquisition, ownership and receiving possession of or title to any special nuclear material within the acts prohibited to persons, prohibited the Commission from issuing a license pursuant to section 2073 of this title if the Commission finds that the issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public, and extended the power of the Commission to refuse to distribute any special nuclear material if it finds that the distribution would constitute a nunreasonable risk to the health and safety of the public.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2016, 2121, 2153, 2154, 2201, 2272, 2282 of this title.

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SUBCHAPTER VI.—SOURCE MATERIAL

PRIOR PROVISIONS

Provisions similar to those comprising this subchapter were contained in section 5 of act Aug. 1, 1946, ch. 724, 60 Stat. 760 (formerly classified to section 1805 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

CROSS REFERENCES

Agreements with States for discontinuance of Commission regulation of certain materials under this subchapter and exemptions from licensing requirements therein contained, see section 2021 (b) and (f) of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2021 of this title.

§ 2091. Determination of source material.

The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Joint Committee and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Joint Committee, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period. (Aug. 1, 1946, ch. 724, § 61, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2201 of this title; title 30 section 541e.

§ 2092. License requirements for transfers.

Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant. (Aug. 1, 1946, ch. 724, § 62, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2121, 2183, 2282 of this title.

§ 2093. Domestic distribution of source material.

(a) License.

The Commission is authorized to issue licenses for and to distribute source material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 2051 of this title;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 2134 of this title;

(3) for use under a license issued pursuant to section 2133 of this title; or

(4) for any other use approved by the Commission as an aid to science or industry.

(b) Minimum criteria for licenses.

The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of source material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the source material to be distributed;

(2) the quantities of source material to be distributed; and

(3) the intended use of the source material to be distributed.

(c) Determination of charges.

The Commission may make a reasonable charge determined pursuant to section 2201 (m) of this title for the source material licensed and distributed under subsection (a) (1), (a) (2), or (a) (4) of this section and shall make a reasonable charge determined pursuant to section 2201 (m) of this title, for the source material licensed and distributed under subsection (a) (3) of this section. The Commission shall establish criteria in writing for the determination of whether a charge will be made for the source material licensed and distributed under subsection (a) (1), (a) (2), or (a) (4) of this section, considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the source material will be used. (Aug. 1, 1946, ch. 724, § 63, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 933.)

CROSS REFERENCES

Nonprofit educational institution exempt from financial protection requirement, see section 2210(k) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2210 of this title.

* * * * *

§ 2097. Operations on lands belonging to the United States.

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this chapter, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however,* That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary. (Aug. 1, 1946, ch. 724, § 67, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 934.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is refererd to in section 2183 of this title.

* * * * *

SUBCHAPTER VII.—BYPRODUCT MATERIALS

PRIOR PROVISIONS

Provisions similar to those comprising this subchapter were contained in section 5 of act Aug. 1 1946, ch. 724, 60 Stat. 760 (formerly classified to section 1805 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act of Aug. 30, 1954, ch. 1073, 68 Stat. 921.

CROSS REFERENCES

Agreements with States for discontinuance of Commission regulation of certain materials under this subchapter and exemptions from licensing requirements therein contained, see section 2021 (b) and (f) of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2021 of this title.

§ 2111. Domestic distribution; license; price limitations.

No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section or by section 2112 of this title. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to licensees with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. Licensees of the Commission may distribute byproduct material only to applicants therefor who are licensed by the Commission to receive such byproduct material. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the

recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public. (Aug. 1, 1946, ch. 724, § 81, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 935.)

CROSS REFERENCES

Nonprofit educational institution exempt from financial protection requirement, see section 2210 (k) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2121, 2183, 2201, 2210, 2202 of this title.

* * * * *

SUBCHAPTER IX.—ATOMIC ENERGY LICENSES

PRIOR PROVISIONS

Provisions similar to those comprising this subchapter were contained in section 7 of act Aug. 1, 1946, ch. 724, 60 Stat. 764 (formerly classified to section 1807 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

§ 2131. License required.

It shall be unlawful, except as provided in section 2121 of this title, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 2133 or 2134 of this title. (Aug. 1, 1946, ch. 724, § 101, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936, and amended Aug. 6, 1956, ch. 1015, § 11, 70 Stat. 1071.)

AMENDMENTS

1958—Act Aug. 6, 1956, inserted the word "use," between the words "possess," and "import".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2122, 2139, 2272, 2282 of this title.

§ 2132. Utilization and production facilities for industrial or commercial purposes.

(a) Except as provided in subsections (b) and (c) of this section, or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 2133 of this title.

(b) Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to section 2134(b) of this title prior to enactment into law of this subsection, shall be issued under section 2134(b) of this title.

(c) Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under section 2134(b) of this title. (Aug. 1, 1964, ch. 724, § 102, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936, and amended Dec. 19, 1970, Pub. L. 91–560, § 3, 84 Stat. 1472.)

AMENDMENTS

1970—Pub. L. 91–560 substituted provisions authorizing the Commission to issue licenses for a utilization or production facility for industrial or commercial purposes under section 2133, except that license may be issued under section 2134(b), for such utilization or production facility, the construction or operation of which was licensed under section 2134(b) before December 19, 1970 or constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program, for provisions authorizing the Commission to issue licenses pursuant to section 2133 of this title on a determination that such utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2133, 2134, 2201 of this title.

§ 2133. Commercial licenses.

(a) Conditions.

The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of subchapter XV of this chapter and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this chapter.

(b) Nonexclusive basis.

The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

(c) License period.

Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.

(d) Limitations.

No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title, or except under the provisions of section 2139 of this title. No license may be issued to an alien or any [1] any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public. (Aug. 1, 1946, ch. 724, § 103, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 936, and amended Aug. 6, 1956, ch. 1015, §§ 12, 13, 70 Stat 1071; Dec. 19, 1970, Pub. L. 91–560, § 4, 84 Stat. 1472.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–560 eliminated the requirement of a finding of practical value under section 2132 and substituted "utilization and production facilities for industrial or commercial purposes" for "such type of utilization or production facility".

1956—Subsec. (a). Act Aug. 6, 1956, § 12, inserted the word "use," between the words "possess," and "import".

Subsec. (d). Act Aug. 6, 1956, § 13, inserted the words "an alien or any" between the words "issued to" and the words "any corporation".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2019, 2020, 2061, 2073, 2076, 2093, 2131, 2132, 2134, 2135, 2136, 2138, 2153, 2154, 2165, 2183, 2201, 2209, 2210, 2232, 2239, 2282 of this title.

§ 2134. Medical therapy, research, and development licenses; limitations.

(a) The Commission is authorized to issue licenses to persons applying therefor for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this chapter to promote the common defense and security and to protect the health and safety of the public.

(b) As provided for in subsection (b) or (c) of section 2132 of this title, or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this chapter.

(c) The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 2051 of this title and which are not facilities of the type specified in subsection (b) of this section. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this chapter to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

(d) No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title or except under the provisions of section 2139 of this title. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public. (Aug. 1, 1946, ch. 724, § 104, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 937, and amended Dec. 19, 1970, Pub. L. 91–560, § 5, 84 Stat. 1472.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–560 substituted provisions authorizing the issue of licenses for utilization or production facilities for industrial or commercial purposes (i) where specifically authorized by law or (ii) where the facility was constructed or operated under an arrangement with the Commission entered into under the cooperative power reactor demonstration program, and the applicable statutory authorization does not require licensing under section 2133, or (iii) where the facility was theretofore licensed under section 2134(b), for provisions authorizing the issue of licenses for utilization and production facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial and commercial purposes.

CROSS REFERENCES

Nonprofit educational institution exempt from financial protection requirement, see section 2210 (k) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2061, 2073, 2074, 2076, 2093, 2131, 2132, 2135, 2136, 2138, 2153, 2154, 2165, 2183, 2201, 2209, 2210, 2232, 2239, 2282 of this title.

* * * * *

§ 2136. Classes of facilities.

The Commission may—

(a) group the facilities licensed either under section 2133 or 2134 of this title into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;

(b) define the various activities to be carried on at each such class of facility; and

(c) designate the amounts of special nuclear material available for use by each such facility. (Aug. 1, 1946, ch. 724, § 106, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 938.)

[1] So in original.

§ 2137. Operators' licenses.

The Commission shall—

(a) prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this chapter;

(b) determine the qualifications of such individuals;

(c) issue licenses to such individuals in such form as the Commission may prescribe; and

(d) suspend such licenses for violations of any provision of this chapter or any rule or regulation issued thereunder whenever the Commission deems such action desirable. (Aug. 1, 1946, ch. 724, § 107, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2282 of this title.

* * * * *

§ 2140. Exclusions from license requirement.

Nothing in this subchapter shall be deemed—

(a) to require a license for (1) the processing, fabricating, or refining of special nuclear material, or the separation of special nuclear material, or the separation of special nuclear material from other substances, under contract with and for the account of the Commission; or (2) the construction or operation of facilities under contract with and for the account of the Commission; or

(b) to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 2121 of this title, or for the use of such facility by the Department of Defense or a contractor thereof. (Aug. 1, 1946, ch. 724, § 110, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 939.)

* * * * *

SUBCHAPTER XV.—JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE

PRIOR PROVISIONS

Provisions similar to those comprising this subchapter were contained in section 14 of act Aug. 1, 1946, ch. 724, 60 Stat. 772 (formerly classified to section 1814 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, 9:44 a. m., E. D. T., ch. 1073, 68 Stat. 921.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2133 of this title.

§ 2231. Applicability of Administrative Procedure Act; definitions.

The provisions of the Administrative Procedure Act shall apply to all agency action taken under this chapter, and the terms "agency" and "agency action" shall have the meaning specified in the Administrative Procedure Act: *Provided, however,* That in the case of agency proceedings or actions which involve Restricted Data or defense information, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data or defense information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data or defense information were not involved. (Aug. 1, 1946, ch. 724, § 181, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 953.)

REFERENCES IN TEXT

The Administrative Procedure Act, referred to in text, is classified to sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees.

§ 2232. License applications.

(a) Contents and form.

Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 2133 and 2134 of this title shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

(b) Review of applications by Advisory Committee on Reactor Safeguards; report.

The Advisory Committee on Reactor Safeguards shall review each application under section 2133 or section 2134(b) of this title for a construction permit or an operating license for a facility, any application under section 2134(c) of this title for a construction permit or an operating license for a testing facility, any application under subsection (a) or (c) of section 2134 of this title specifically referred to it by the Commission, and any application for an amendment to a construction permit or an amendment to an operating license under section 2133 or 2134(a), (b), or (c) of this title specifically referred to it by the Commission, and shall submit a report thereon which shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

(c) Commercial power; publication.

The Commission shall not issue any license under section 2133 of this title for a utilization or produc-

tion facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

(d) Preferred consideration.

The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 2133 of this title, shall give preferred consideration to applications for such facilities which will be located in high cost power areas in the United States if there are conflicting applications for a limited opportunity for such license. Where such conflicting applications resulting from limited opportunity for such license include those submitted by public or cooperative bodies such applications shall be given preferred consideration. (Aug. 1, 1946, ch. 724, § 182, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 953, and amended Aug. 6, 1956, ch. 1015, § 5, 70 Stat. 1070; Sept. 2, 1957, Pub. L. 85–256, § 6, 71 Stat. 579; Aug. 29, 1962, Pub. L. 87–615, § 3, 76 Stat. 409; Dec. 19, 1970, Pub. L. 91–560, § 9, 84 Stat. 1474.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91–560 substituted provisions requiring notification by publication giving reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility, for provisions requiring notice in writing to municipalities, private utilities, public bodies and cooperatives within transmission distance authorized to engage in the distribution of electric energy.

1962—Subsec. (b). Pub. L. 87–615 substituted provisions requiring review of applications under sections 2133 or 2134(b) of this title for a construction permit or an operating license for a facility, or under section 2134(c) of this title for a testing facility, for provisions which required review of license applications for such facilities, and inserted provisions requiring review of any application for an amendment to a construction permit or operating license under sections 2133 or 2134 (a), (b), or (c) of this title specifically referred to it by the Commission.

1957—Subsec. (b). Pub. L. 85–256 added subsec. (b) and also redesignated former subsec. (b) as (c).

Subsecs. (c) and (d). Pub. L. 85–256 redesignated former subsecs. (b) and (c) as (c) and (d).

1956—Subsec. (a). Act Aug. 6, 1956 eliminated words "under oath or affirmation" from the last sentence, and added two sentences at the end requiring applications and statements in connection with sections 2133 and 2134 to be made under oath or affirmation and authorizing Commission to require any other applications or statements to be made under oath or affirmation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2236 of this title.

§ 2233. Terms of licenses.

Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this chapter, including the following provisions:

(a) Repealed. Pub. L. 88–489, § 18, Aug. 26, 1964, 78 Stat. 607.

(b) No right to the special nuclear material shall be conferred by the license except as defined by the license.

(c) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter.

(d) Every license issued under this chapter shall be subject to the right of recapture or control reserved by section 2138 of this title, and to all of the other provisions of this chapter, now or hereafter in effect and to all valid rules and regulations of the Commission. (Aug. 1, 1946, ch. 724, § 183, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 954, and amended Aug. 26, 1964, Pub. L. 88–489, § 18, 78 Stat. 607.)

AMENDMENTS

1964—Par. (a). Pub. L. 88–489 deleted par. (a) which placed title to all special nuclear material utilized or produced by facilities pursuant to license in the United States at all times.

§ 2234. Inalienability of licenses.

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this chapter, and shall give its consent in writing. The Commission may give such consent to the creation of a mortgage, pledge, or other lien upon any facility or special nuclear material, owned or thereafter acquired by a licensee, or upon any leasehold or other interest to such facility, and the rights of the creditors so secured may thereafter be enforced by any court subject to rules and regulations established by the Commission to protect public health and safety and promote the common defense and security. (Aug. 1, 1946, ch. 724, § 184, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 954, and amended Aug. 26, 1964, Pub. L. 88–489, § 19, 78 Stat. 607.)

AMENDMENTS

1964—Pub. L. 88–489 inserted "or special nuclear material," following "lien upon any facility" and substituted "interest in such facility" for "interest in such property."

§ 2235. Construction permits.

All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the

facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this chapter and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this chapter, the Commission shall thereupon issue a license to the applicant. For all other purposes of this chapter, a construction permit is deemed to be a "license". (Aug. 1, 1946, ch. 724, § 185, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2210 of this title.

§ 2236. Revocation of licenses.

(a) False applications; failure of performance.

Any license may be revoked for any material false statement in the application or any statement of fact required under section 2232 of this title, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this chapter or of any regulation of the Commission.

(b) Procedure.

The Commission shall follow the provisions of section 9(b) of the Administrative Procedure Act in revoking any license.

(c) Repossession of material.

Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under the Administrative Procedure Act. Just compensation shall be paid for the use of the facility. (Aug. 1, 1946, ch. 724, § 186, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955.)

REFERENCES IN TEXT

Section 9(b) of the Administrative Procedure Act, referred to in subsec. (b), was repealed in the general revision of Title 5, and is now covered by section 558(c) of Title 5, Government Organization and Employees.

The Administrative Procedure Act, referred to in subsec. (c), was repealed in the general revision of Title 5, and the provisions are now covered by sections 551 et seq. and 701 et seq. of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2238, 2239, 2282 of this title.

§ 2237. Modification of license.

The terms and conditions of all licenses shall be subject to amendment, revision, or modification, by reason of amendments of this chapter or by reason of rules and regulations issued in accordance with the terms of this chapter. (Aug. 1, 1946, ch. 724, § 187, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955.)

§ 2238. Continued operation of facilities.

Whenever the Commission finds that the public convenience and necessity or the production program of the Commission requires continued operation of a production facility or utilization facility the license for which has been revoked pursuant to section 2236 of this title, the Commission may, after consultation with the appropriate regulatory agency, State or Federal, having jurisdiction, order that possession be taken of and such facility be operated for such period of time as the public convenience and necessity or the production program of the Commission may, in the judgment of the Commission, require, or until a license for the operation of the facility shall become effective. Just compensation shall be paid for the use of the facility. (Aug. 1, 1946, ch. 724, § 188, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2239 of this title.

§ 2239. Hearings and judicial review.

(a) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236 (c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 2133 or 2134(b) of this title for a construction permit for a facility, and on any application under section 2134 (c) of this title for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(b) Any final order entered in any proceeding of the kind specified in subsection (a) of this section shall be subject to judicial review in the manner prescribed in the Act of December 29, 1950, as amended, and to the provisions of section 10 of the

Administrative Procedure Act, as amended. (Aug. 1, 1946, ch. 724, § 189, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 955, and amended Sept. 2, 1957, Pub. L. 85–256, § 7, 71 Stat. 579; Aug. 29, 1962, Pub. L. 87–615, § 2, 76 Stat. 409.)

REFERENCES IN TEXT

The Act of December 29, 1950, as amended, referred to in subsec. (b), was repealed in the general revision of Title 5, and the provisions are now covered by section 2341 et seq. of Title 28, Judiciary and Judicial Procedure.

Section 10 of the Administrative Procedure Act, as amended, referred to in subsec. (b), was repealed in the general revision of Title 5, and is now covered by section 701 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–615 substituted "construction permit for a facility" and "construction permit for a testing facility" for "license for a facility" and "license for a testing facility" respectively, and authorized the commission in cases where a permit has been issued following a hearing, and in the absence of a request therefor by anyone whose interest may be affected, to issue an operating license or an amendment to a construction permit or an operating license without a hearing upon thirty days' notice and publication once in the Federal Register of its intent to do so, and to dispense with such notice and publication with respect to any application for an amendment to a construction permit or to an operating license upon its determination that the amendment involves no significant hazards consideration

1957—Subsec. (a). Pub. L. 85–256 required the Commission to hold a hearing after 30 days notice and publication once in the Federal Register on an application for a license for a facility or a testing facility.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 2342.

§ 2240. Licensee incident reports as evidence.

No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report. (Aug. 1, 1946, ch. 724, § 190, as added Sept. 6, 1961, Pub. L. 87–206, § 16, 75 Stat. 479.)

§ 2241. Atomic safety and licensing boards; establishment; membership; functions; compensation.

(a) Notwithstanding the provisions of 7(a) and 8(a) of the Administrative Procedure Act, the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this chapter, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.

(b) Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 2203 of this title shall be applicable to board members appointed from private life. (Aug. 1, 1946, ch. 724, § 191, as added Aug. 29, 1962, Pub. L. 87–615, § 1, 76 Stat. 409, and amended Dec. 19, 1970, Pub. L. 91–560, § 10, 84 Stat. 1474.)

REFERENCES IN TEXT

Sections 7(a) and 8(a) of the Administrative Procedure Act, referred to in subsec. (a), were repealed in the general revision of Title 5, and the provisions are now covered by sections 556 and 557, respectively of Title 5, Government Organization and Employees.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–560 required that two members of the board should have such technical or other qualifications the Commission deems appropriate to the issues to be decided.

§ 2242. Temporary operating licenses for nuclear power reactors.

(a) Prerequisites for filing applications; affidavits; hearing.

In any proceeding upon an application for an operating license for a nuclear power reactor, in which a hearing is otherwise required pursuant to section 2239(a) of this title, the applicant may petition the Commission for a temporary operating license authorizing operation of the facility pending final action by the Commission on the application. Such petition may be filed at any time after filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 2232(b) of this title; (2) the safety evaluation of the application by the Commission's regulatory staff; and (3) the regulatory staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 4332(2)(C) of this title or, in the case of an application for operating license filed on or before September 9, 1971, if the regulatory staff's final detailed statement required under section 4332(2)(C) of this title is not completed, the Commission must satisfy the applicable requirements of the National Environmental Policy Act prior to issuing any temporary operating license under this section. The petition shall be accompanied by an affidavit or affidavits setting forth the facts upon which the petitioner relies to justify issuance of the temporary operating license. Any party to the proceeding may file affidavits in support of, or opposition to, the petition within fourteen days after the filing of such petition, or within such additional time not to exceed ten days as may be fixed by the Commission. The Commission shall hold a hearing after ten days' notice and publication once in the Federal Register on any such petition and supporting material filed under this section and the decision of the Commission with respect to the issuance of a temporary operating license, following such hearing, shall be on the basis of findings on the matters specified in subsection (b) of this section. The hearing required by this

section and the decision of the Commission on the petition shall be conducted with expedited procedures as the Commission may by rule, regulation, or order deem appropriate for a full disclosure of material facts on all substantial issues raised in connection with the proposed temporary operating license.

(b) Requisite findings of Commission; terms and conditions of temporary license; judicial review.

With respect to any petition filed pursuant to subsection (a) of this section, the Commission shall issue a temporary operating license upon finding that:

(1) the provisions of section 2235 of this title have been met with respect to the temporary operating license;

(2) operation of the facility during the period of the temporary operating license in accordance with its terms and condition will provide adequate protection of the environment during the period of the temporary operating license; and

(3) operation of the facility in accordance with the terms and conditions of the temporary operating license is essential toward insuring that the power generating capacity of a utility system or power pool is at, or is restored to, the levels required to assure the adequacy and reliability of the power supply, taking into consideration factors which include, but need not be limited to, alternative available sources of supply, historical reserve requirements for the systems involved to function reliably, the possible endangerment to the public health and safety in the event of power shortages, and data from appropriate Federal and State governmental bodies which have official responsibility to assure an adequate and reliable power supply.

The temporary license shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof, and the requirement that the licensee not retire or dismantle any of its existing generating capacity on the ground of the availability of the capacity from the facility which is operating under the temporary license. Any decision or other document authorizing the issuance of any temporary license pursuant to this section shall recite with specificity the reasons justifying the issuance. The decision of the Commission with respect to the issuance of a temporary operating license shall be subject to judicial review pursuant to the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129).

(c) Vacation of temporary license.

The hearing on the application for the final operating license otherwise required pursuant to section 2239(a) of this title shall be concluded as promptly as practicable. The Commission shall vacate the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license pursuant to subsection (b) of this section shall be without prejudice to the position of any party to the proceeding in which a hearing is otherwise required pursuant to section 2239(a) of this title; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license.

(d) Expiration of authority.

The authority under this section shall expire on October 30, 1973. (Aug. 1, 1946, ch. 724, § 192, as added June 2, 1972, Pub. L. 92-307, 86 Stat. 191.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (a), is classified to section 4321 et seq. of this title.

Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129), referred to in subsec. (b), was repealed in the general revision of Title 5, and the provisions are now covered by section 2341 et seq. of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER XVII.—ENFORCEMENT OF CHAPTER

PRIOR PROVISIONS

Provisions similar to those comprising this subchapter were contained in section 16 of act Aug. 1, 1946, ch. 724, 60 Stat. 773 (formerly classified to section 1816 of this title) prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921.

* * * * *

§ 2274. Communication of Restricted Data.

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

(a) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $20,000 or both;

(b) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than $10,000 or imprisonment for not more than ten years, or both.

(Aug. 1, 1946, ch. 724, § 224, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 958, and amended Dec. 24, 1969, Pub. L. 91-161, § 3(b), 83 Stat. 444.)

AMENDMENTS

1969—Pub. L. 91-161 made the death penalty inapplicable for the willful violation, or attempted violation of this section with the intent to injure the United States, or secure an advantage for any foreign nation.

§ 2275. Receipt of Restricted Data.

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data, shall upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine or not more than $20,000 or both. (Aug. 1, 1946, ch. 724, § 225, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959, and amended Dec. 24, 1969, Pub. L. 91–161, § 3(b), 83 Stat. 444.)

AMENDMENTS

1969—Pub. L. 91–161 made the death penalty inapplicable for the willful violation, or attempted violation of this section with the intent to injure the United States, or secure an advantage for any foreign nation.

* * * * *

§ 2277. Disclosure of Restricted Data.

Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this chapter or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than $2,500. (Aug. 1, 1946, ch. 724, § 227, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 959.)

2. Electronic Product Radiation Control

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Sec.

§ 263b. Congressional declaration of purpose.

The Congress hereby declares that the public health and safety must be protected from the dangers of electronic product radiation. Thus, it is the purpose of this subpart to provide for the establishment by the Secretary of an electronic product radiation control program which shall include the development and administration of performance standards to control the emission of electronic product radiation from electronic products and the undertaking by public and private organizations of research and investigation into the effects and control of such radiation emissions. (July 1, 1944, ch. 373, title III, § 354, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1173.)

§ 263c. Definitions.

As used in this subpart—

(1) the term "electronic product radiation" means—

(A) any ionizing or non-ionizing electromagnetic or particulate radiation, or

(B) any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic product as

the result of the operation of an electronic circuit in such product;

(2) the term "electronic product" means (A) any manufactured or assembled product which, when in operation, (i) contains or acts as part of an electronic circuit and (ii) emits (or in the absence of effective shielding or other controls would emit) electronic product radiation, or (B) any manufactured or assembled article which is intended for use as a component, part, or accessory of a product described in clause (A) and which when in operation emits (or in the absence of effective shielding or other controls would emit) such radiation;

(3) the term "manufacturer" means any person engaged in the business of manufacturing, assembling, or importing of electronic products;

(4) the term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia; and

(5) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, **the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa.**

(July 1, 1944, ch. 373, title III, § 355, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1174, and amended Pub. L. 94–484, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325.)

§ 263d. Program of control.

(a) Establishment.

The Secretary shall establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic product radiation. As a part of such program, he shall—

(1) pursuant to section 263f of this title, develop and administer performance standards for electronic products;

(2) plan, conduct, coordinate, and support research, development, training, and operational activities to minimize the emissions of and the exposure of people to, unnecessary electronic product radiation;

(3) maintain liaison with and receive information from other Federal and State departments and agencies with related interests, professional organizations, industry, industry and labor associations, and other organizations on present and future potential electronic product radiation;

(4) study and evaluate emissions of, and conditions of exposure to, electronic product radiation and intense magnetic fields;

(5) develop, test, and evaluate the effectiveness of procedures and techniques for minimizing exposure to electronic product radiation; and

(6) consult and maintain liaison with the Secretary of Commerce, the Secretary of Defense, the Secretary of Labor, the Atomic Energy Commission, and other appropriate Federal departments and agencies on (A) techniques, equipment, and programs for testing and evaluating electronic product radiation, and (B) the development of performance standards pursuant to section 263f of this title to control such radiation emissions.

(b) Powers of Secretary.

In carrying out the purposes of subsection (a) of this section, the Secretary is authorized to—

(1) (A) collect and make available, through publications and other appropriate means, the results of, and other information concerning, research and studies relating to the nature and extent of the hazards and control of electronic product radiation; and (B) make such recommendations relating to such hazards and control as he considers appropriate;

(2) make grants to public and private agencies, organizations, and institutions, and to individuals for the purposes stated in paragraphs (2), (4), and (5) of subsection (a) of this section;

(3) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 529 of Title 31 and section 5 of Title 41; and

(4) procure (by negotiation or otherwise) electronic products for research and testing purposes, and sell or otherwise dispose of such products.

(c) Record keeping.

(1) Each recipient of assistance under sections this subpart pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this subpart under other than competitive bidding procedures. (July 1, 1944, ch. 373, title III, § 356, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1174.)

§ 263e. Studies by the Secretary.

(a) Report to Congress.

The Secretary shall conduct the following studies, and shall make a report or reports of the results of such studies to the Congress on or before January 1, 1970, and from time to time thereafter as he may find necessary, together with such recommendations for legislation as he may deem appropriate:

(1) A study of present State and Federal control of health hazards from electronic product radiation and other types of ionizing radiation, which study shall include, but not be limited to—

(A) control of health hazards from radioactive materials other than material regulated under the Atomic Energy Act of 1954;

(B) any gaps and inconsistencies in present controls;

(C) the need for controlling the sale of certain used electronic products, particularly antiquated

X-ray equipment, without upgrading such products to meet the standards for new products or separate standards for used products;

(D) measures to assure consistent and effective control of the aforementioned health hazards;

(E) measures to strengthen radiological health programs of State governments; and

(F) the feasibility of authorizing the Secretary to enter into arrangements with individual States or groups of States to define their respective functions and responsibilities for the control of electronic product radiation and other ionizing radiation;

(2) A study to determine the necessity for the development of standards for the use of nonmedical electronic products for commercial and industrial purposes; and

(3) A study of the development of practicable procedures for the detection and measurement of electronic product radiation which may be emitted from electronic products manufactured or imported prior to the effective date of any applicable standard established pursuant to this subpart.

(b) Participation of other Federal agencies.

In carrying out these studies, the Secretary shall invite the participation of other Federal departments and agencies having related responsibilities and interests, State governments—particularly those of States which regulate radioactive materials under section 2021 of this title and interested professional, labor, and industrial organizations. Upon request from congressional committees interested in these studies, the Secretary shall keep these committees currently informed as to the progress of the studies and shall permit the committees to send observers to meetings of the study groups.

(c) Organization of studies and participation.

The Secretary or his designee shall organize the studies and the participation of the invited participants as he deems best. Any dissent from the findings and recommendations of the Secretary shall be included in the report if so requested by the dissenter. (July 1, 1944, ch. 373, title III, § 357, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1176.)

§ 263f. Performance standards for electronic products.

(a) Promulgation of regulations.

(1) The Secretary shall by regulation prescribe performance standards for electronic products to control the emission of electronic product radiation from such products if he determines that such standards are necessary for the protection of the public health and safety. Such standards may include provisions for the testing of such products and the measurement of their electronic product radiation emissions, may require the attachment of warning signs and labels, and may require the provision of instructions for the installation, operation, and use of such products. Such standards may be prescribed from time to time whenever such determinations are made, but the first of such standards shall be prescribed prior to January 1, 1970. In the development of such standards, the Secretary shall consult with Federal and State departments and agencies having related responsibilities or interests and with appropriate professional organizations and interested persons, including representatives of industries and labor organizations which would be affected by such standards, and shall give consideration to—

(A) the latest available scientific and medical data in the field of electronic product radiation;

(B) the standards currently recommended by (i) other Federal agencies having responsibilities relating to the control and measurement of electronic product radiation, and (ii) public or private groups having an expertise in the field of electronic product radiation;

(C) the reasonableness and technical feasibility of such standards as applied to a particular electronic product;

(D) the adaptability of such standards to the need for uniformity and reliability of testing and measuring procedures and equipment; and

(E) in the case of a component, or accessory described in paragraph (2) (B) of section 263c of this title, the performance of such article in the manufactured or assembled product for which it is designed.

(2) The Secretary may prescribe different and individual performance standards, to the extent appropriate and feasible, for different electronic products so as to recognize their different operating characteristics and uses.

(3) The performance standards prescribed under this section shall not apply to any electronic product which is intended solely for export if (A) such product and the outside of any shipping container used in the export of such product are labeled or tagged to show that such product is intended for export, and (B) such product meets all the applicable requirements of the country to which such product is intended for export.

(4) The Secretary may by regulation amend or revoke any performance standard prescribed under this section.

(5) The Secretary may exempt from the provisions of this section any electronic product intended for use by departments or agencies of the United States provided such department or agency has prescribed procurement specifications governing emissions of electronic product radiation and provided further that such product is of a type used solely or predominantly by departments or agencies of the United States.

(b) Administrative procedure.

The provisions of subchapter II of chapter 5 of Title 5 (relating to the administrative procedure for rulemaking), and of chapter 7 of Title 5 (relating to judicial review), shall apply with respect to any regulation prescribing, amending, or revoking any standard prescribed under this section.

(c) Publication in Federal Register.

Each regulation prescribing, amending, or revoking a standard shall specify the date on which it shall take effect which, in the case of any regulation

prescribing, or amending any standard, may not be sooner than one year or not later than two years after the date on which such regulation is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest and publishes in the Federal Register his reason for such finding, in which case such earlier or later date shall apply.

(d) Judicial review.

(1) In a case of actual controversy as to the validity of any regulation issued under this section prescribing, amending, or revoking a performance standard, any person who will be adversely affected by such regulation when it is effective may at any time prior to the sixtieth day after such regulation is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such regulation. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the regulation, as provided in section 2112 of Title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original regulation, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the regulation in accordance with chapter 7 of Title 5 and to grant appropriate relief as provided in such chapter.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such regulation of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not substitution for any other remedies provided by law.

(e) Availability of record.

A certified copy of the transcript of the record and administrative proceedings under this section shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this subpart irrespective of whether proceedings with respect to the regulation have previously been initiated or become final under this section.

(f) Technical Electronic Product Radiation Safety Standards Committee.

(1)(A) The Secretary shall establish a Technical Electronic Product Radiation Safety Standards Committee (hereafter in this subpart referred to as the "Committee") which he shall consult before prescribing any standard under this section. The Committee shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspects of electronic product radiation safety, and shall be composed of fifteen members each of whom shall be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety, as follows:

(i) Five members shall be selected from governmental agencies including State and Federal Governments;

(ii) Five members shall be selected from the affected industries after consultation with industry representatives; and

(iii) Five members shall be selected from the general public, of which at least one shall be a representative of organized labor.

(B) The Committee may propose electronic product radiation safety standards to the Secretary for his consideration All proceedings of the Committee shall be recorded and the record of each such proceeding shall be available for public inspection.

(2) Payments to members of the Committee who are not officers or employees of the United States pursuant to section 210(c) of this title shall not render members of the Committee officers or employees of the United States for any purpose.

(g) Review and evaluation.

The Secretary shall review and evaluate on a continuing basis testing programs carried out by industry to assure the adequacy of safeguards against hazardous electronic product radiation and to assure that electronic products comply with standards prescribed under this section.

(h) Product certification.

Every manufacturer of an electronic product to which is applicable a standard in effect under this section shall furnish to the distributor or dealer at the time of delivery of such product, in the form of a label of tag permanently affixed to such product or in such manner as approved by the Secretary, the certification that such product conforms to all applicable standards under this section. Such certification shall be based upon a test, in accordance with such standard, of the individual article to which it is attached or upon a testing program which is in accord with good manufacturing practice and which has not been disapproved by the Secretary (in such manner as he shall prescribe by regulation) on the grounds that it does not assure the adequacy of safeguards against hazardous electronic product radia-

tion or that it does not assure that electronic products comply with the standards prescribed under this section. (July 1, 1944, ch. 373, title III, § 358, as added Oct. 18, 1968, Pub. L. 90-602, § 2(3), 82 Stat. 1177, amended Oct. 30, 1970, Pub. L. 91-515, title VI, § 601(b)(2), (3), 84 Stat. 1311.)

AMENDMENTS

1970—Subsec. (f)(2). Pub. L. 91-515 struck out the provisions which related to the payment of compensation and travel expenses of members of the Committee who are not officers or employees of the United States, and substituted "to members of the Committee who are not officers or employees of the United States pursuant to section 210(c) of this title" for "under this subsection".

DEFINITION OF "SECRETARY" AND "DEPARTMENT"

The terms "Secretary" and "Department" as used in this section, except when otherwise specified, to mean Secretary of Health, Education, and Welfare and Department of Health, Education, and Welfare, respectively, see section 3 of Pub. L. 90-602, set out as a note under section 263b of this title.

§ 263g. Notification of defects in and repair or replacement of electronic products.

(a) Notification; exemption.

(1) Every manufacturer of electronic products who discovers that an electronic product produced, assembled, or imported by him has a defect which relates to the safety of use of such product by reason of the emission of electronic product radiation, or that an electronic product produced, assembled, or imported by him on or after the effective date of an applicable standard prescribed pursuant to section 263f of this title fails to comply with such standard, shall immediately notify the Secretary of such defect or failure to comply if such product has left the place of manufacture and shall (except as authorized by paragraph (2)) with reasonable promptness furnish notification of such defect or failure to the persons (where known to the manufacturer) specified in subsection (b) of this section.

(2) If, in the opinion of such manufacturer, the defect or failure to comply is not such as to create a significant risk of injury, including genetic injury, to any person, he may, at the time of giving notice to the Secretary of such defect or failure to comply, apply to the Secretary for an exemption from the requirement of notice to the persons specified in subsection (b) of this section. If such application states reasonable grounds for such exemption, the Secretary shall afford such manufacturer an opportunity to present his views and evidence in support of the application, the burden of proof being on the manufacturer. If, after such presentation, the Secretary is satisfied that such defect or failure to comply is not such as to create a significant risk of injury, including genetic injury, to any person, he shall exempt such manufacturer from the requirement of notice to the persons specified in subsection (b) of this section and from the requirements of repair or replacement imposed by subsection (f) of this section.

(b) Method of notification.

The notification (other than to the Secretary) required by paragraph (1) of subsection (a) of this section shall be accomplished—

(1) by certified mail to the first purchaser of such product for purposes other than resale, and to any subsequent transferee of such product; and

(2) by certified mail or other more expeditious means to the dealers or distributors of such manufacturer to whom such product was delivered.

(c) Requisite elements of notification.

The notifications required by paragraph (1) of subsection (a) of this section shall contain a clear description of such defect or failure to comply with an applicable standard, an evaluation of the hazard reasonably related to such defect or failure to comply, and a statement of the measures to be taken to repair such defect. In the case of a notification to a person referred to in subsection (b) of this section, the notification shall also advise the person of his rights under subsection (f) of this section.

(d) Copies to Secretary of communications by manufacturers to dealers or distributors regarding defects.

Every manufacturer of electronic products shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the dealers or distributors of such manufacturer or to purchasers (or subsequent transferees) of electronic products of such manufacturer regarding any such defect in such product or any such failure to comply with a standard applicable to such product. The Secretary shall disclose to the public so much of the information contained in such notice or other information obtained under section 2631 of this title as he deems will assist in carrying out the purposes of this subpart, but he shall not disclose any information which contains or relates to a trade secret or other matter referred to in section 1905 of Title 18 unless he determines that it is necessary to carry out the purposes of this subpart.

(e) Notice from Secretary to manufacturer of defects or failure to comply with standards.

If through testing, inspection, investigation, or research carried out pursuant to this subpart, or examination of reports submitted pursuant to section 263i of this title, or otherwise, the Secretary determines that any electronic product—

(1) does not comply with an applicable standard prescribed pursuant to section 263f of this title; or

(2) contains a defect which relates to the safety of use of such product by reason of the emission of electronic product radiation;

he shall immediately notify the manufacturer of such product of such defect or failure to comply. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no failure of compliance or that the alleged defect does not exist or does not relate to safety of use of the product by reason of the emission of such radiation hazard. If after such presentation by the manufacturer the Secretary determines that such product does not comply with an applicable standard prescribed pursuant to section 263f of this title, or that it contains a defect which relates to the safety of use of such product by reason of the emission of

electronic product radiation, the Secretary shall direct the manufacturer to furnish the notification specified in subsection (c) of this section to the persons specified in paragraphs (1) and (2) of subsection (b) of this section (where known to the manufacturer), unless the manufacturer has applied for an exemption from the requirement of such notification on the ground specified in paragraph (2) of subsection (a) of this section and the Secretary is satisfied that such noncompliance or defect is not such as to create a significant risk of injury, including genetic injury, to any person.

(f) Correction of defects.

If any electronic product is found under subsection (a) or (e) of this section to fail to comply with an applicable standard prescribed under this subpart or to have a defect which relates to the safety of use of such product, and the notification specified in subsection (c) of this section is required to be furnished on account of such failure or defect, the manufacturer of such product shall (1) without charge, bring such product into conformity with such standard or remedy such defect and provide reimbursement for any expenses for transportation of such product incurred in connection with having such product brought into conformity or having such defect remedied, (2) replace such product with a like or equivalent product which complies with each applicable standard prescribed under this subpart and which has no defect relating to the safety of its use, or (3) make a refund of the cost of such product. The manufacturer shall take the action required by this subsection in such manner, and with respect to such persons, as the Secretary by regulations shall prescribe.

(g) Effective date.

This section shall not apply to any electronic product that was manufactured before October 18, 1968. (July 1, 1944, ch. 373, title III, § 359, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1180.)

DEFINITION OF "SECRETARY" AND "DEPARTMENT"

The terms "Secretary" and "Department" as used in this section, except when otherwise specified, to mean Secretary of Health, Education, and Welfare and Department of Health, Education, and Welfare, respectively, see section 3 of Pub. L. 90–602, set out as a note under section 263b of this title.

NONINTERFERENCE WITH OTHER FEDERAL AGENCIES

Enactment of this section not to be construed to supersede or limit the functions under any other provision of law of any officer or agency of the United States, see section 4 of Pub. L. 90–602, set out as a note under section 263b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263b—263f, 263h—263n of this title.

§ 263h. Imports.

(a) Refusal of admission to non-complying electronic products.

Any electronic product offered for importation into the United States which fails to comply with an applicable standard prescribed under this subpart, or to which is not affixed a certification in the form of a label or tag in conformity with section 263f(h) of this title shall be refused admission into the United States. The Secretary of the Treasury shall deliver to the Secretary of Health, Education, and Welfare, upon the latter's request, samples of electronic products which are being imported or offered for import in to the United States, giving notice thereof to the owner or consignee, who may have a hearing before the Secretary of Health, Education, and Welfare. If it appears from an examination of such samples or otherwise that any electronic product fails to comply with applicable standards prescribed pursuant to section 263f of this title, then, unless subsection (b) of this section applies and is complied with, (1) such electronic product shall be refused admission, and (2) the Secretary of the Treasury shall cause the destruction of such electronic product unless such article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days after the date of notice of refusal of admission or within such additional time as may be permitted by such regulations.

(b) Bond.

If it appears to the Secretary of Health, Education, and Welfare that any electronic product refused admission pursuant to subsection (a) of this section can be brought into compliance with applicable standards prescribed pursuant to section 263f of this title, final determination as to admission of such electronic product may be deferred upon filing of timely written application by the owner or consignee and the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as the Secretary of Health, Education, and Welfare may by regulation prescribe. If such application is filed and such bond is executed the Secretary of Health, Education, and Welfare may, in accordance with rules prescribed by him, permit the applicant to perform such operations with respect to such electronic product as may be specified in the notice of permission.

(c) Liability of owner or consignee for expenses connected with refusal of admission.

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of operations provided for in subsection (b) of this section, and all expenses in connection with the storage, cartage, or labor with respect to any electronic product refused admission pursuant to subsection (a) of this section, shall be paid by the owner or consignee, and, in event of default, shall constitute a lien against any future importations made by such owner or consignee.

(d) Designation of agent for purposes of service.

It shall be the duty of every manufacturer offering an electronic product for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made for and on behalf of said manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made upon said manufacturer by service upon such

designated agent at his office or usual place of residence with like effect as if made personally upon said manufacturer, and in default of such designation of such agent, service of process, notice, order, requirement, or decision in any proceeding before the Secretary or in any judicial proceeding for enforcement of this subpart or any standards prescribed pursuant to this subpart may be made by posting such process, notice, order, requirement, or decision in the Office of the Secretary or in a place designated by him by regulation. (July 1, 1944, ch. 373, title III, § 360, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1181.)

DEFINITION OF "SECRETARY" AND "DEPARTMENT"

The terms "Secretary" and "Department" as used in this section, except when otherwise specified, to mean Secretary of Health, Education, and Welfare and Department of Health, Education, and Welfare, respectively, see section 3 of Pub. L. 90–602, set out as a note under section 263b of this title.

NONINTERFERENCE WITH OTHER FEDERAL AGENCIES

Enactment of this section not to be construed to supersede or limit the functions under any other provision of law of any officer or agency of the United States, see section 4 of Pub. L. 90–602, set out as a note under section 263b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263b—263g, 263l—263n of this title.

§ 263i. Inspection, records, and reports.

(a) Inspection of premises.

If the Secretary finds for good cause that the methods, tests, or programs related to electronic product radiation safety in a particular factory, warehouse, or establishment in which electronic products are manufactured or held, may not be adequate or reliable, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are thereafter authorized (1) to enter, at reasonable times, any area in such factory, warehouse, or establishment in which the manufacturer's tests (or testing programs) required by section 263f(h) of this title are carried out, and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, the facilities and procedures within such area which are related to electronic product radiation safety. Each such inspection shall be commenced and completed with reasonable promptness. In addition to other grounds upon which good cause may be found for purposes of this subsection, good cause will be considered to exist in any case where the manufacturer has introduced into commerce any electronic product which does not comply with an applicable standard prescribed under this subpart and with respect to which no exemption from the notification requirements has been granted by the Secretary under section 263g(a)(2) or 263g(e) of this title.

(b) Record keeping.

Every manufacturer of electronic products shall establish and maintain such records (including testing records), make such reports, and provide such information, as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this subpart and standards prescribed pursuant to this subpart and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer has acted or is acting in compliance with standards prescribed pursuant to this subpart.

(c) Disclosure of technical data.

Every manufacturer of electronic products shall provide to the Secretary such performance data and other technical data related to safety as may be required to carry out the purposes of this subpart. The Secretary is authorized to require the manufacturer to give such notification of such performance and technical data at the time of original purchase to the ultimate purchaser of the electronic product, as he determines necessary to carry out the purposes of this subpart after consulting with the affected industry.

(d) Public nature of reports.

Accident and investigation reports made under this subpart by any officer, employee, or agent of the Secretary shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident. Any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. Any such report shall be made available to the public in a manner which need not identify individuals. All reports on research projects, demonstration projects, and other related activities shall be public information.

(e) Trade secrets.

The Secretary or his representative shall not disclose any information reported to or otherwise obtained by him, pursuant to subsection (a) or (b) of this section, which concerns any information which contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, except that such information may be disclosed to other officers or employees of the Department and of other agencies concerned with carrying out this subpart or when relevant in any proceeding under this subpart. Nothing in this section shall authorize the withholding of information by the Secretary, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(f) Information required to identify and locate first purchasers of electronic products.

The Secretary may by regulation (1) require dealers and distributors of electronic products, to which there are applicable standards prescribed under this subpart and the retail prices of which is not less than $50, to furnish manufacturers of such products such information as may be necessary to identify and locate, for purposes of section 263g of this title, the first purchasers of such products for purposes other than resale, and (2) require manufacturers to preserve such information. Any regulation establishing a requirement pursuant to clause (1) of the preceding sentence shall (A) authorize such dealers and distributors to elect, in lieu of immediately furnishing such information to the manufacturer, to hold and preserve such information until advised by the manufacturer or Secretary that such information is

needed by the manufacturer for purposes of section 263g of this title, and (B) provide that the dealer or distributor shall, upon making such election, give prompt notice of such election (together with information identifying the notifier and the product) to the manufacturer and shall, when advised by the manufacturer or Secretary, of the need therefor for the purposes of section 263g of this title, immediately furnish the manufacturer with the required information. If a dealer or distributor discontinues the dealing in or distribution of electronic products, he shall turn the information over to the manufacturer. Any manufacturer receiving information pursuant to this subsection concerning first purchasers of products for purposes other than resale shall treat it as confidential and may use it only if necessary for the purpose of notifying persons pursuant to section 263g(a) of this title. (July 1, 1944, ch. 373, title III, § 360A, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1182.)

§ 263j. Prohibited acts.

(a) It shall be unlawful—

(1) for any manufacturer to introduce, or to deliver for introduction, into commerce, or to import into the United States, any electronic product which does not comply with an applicable standard prescribed pursuant to section 263f of this title;

(2) for any person to fail to furnish any notification or other material or information required by section 263g or 263i of this title; or to fail to comply with the requirements of section 263g(f) of this title;

(3) for any person to fail or to refuse to establish or maintain records required by this subpart or to permit access by the Secretary or any of his duly authorized representatives to, or the copying of, such records, or to permit entry or inspection, as required by or pursuant to section 263i of this title;

(4) for any person to fail or to refuse to make any report required pursuant to section 263i(b) of this title or to furnish or preserve any information required pursuant to section 263i(f) of this title; or

(5) for any person (A) to fail to issue a certification as required by section 263f(h) of this title, or (B) to issue such a certification when such certification is not based upon a test or testing program meeting the requirements of section 263f(h) of this title or when the issuer, in the exercise of due care, would have reason to know that such certification is false or misleading in a material respect.

(b) The Secretary may exempt any electronic product, or class thereof, from all or part of subsection (a) of this section, upon such conditions as he may find necessary to protect the public health or welfare, for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security. (July 1, 1944, ch. 373, title III, § 360B, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1184.)

§ 263k. Enforcement.

(a) Jurisdiction of courts.

The district courts of the United States shall have jurisdiction, for cause shown, to restrain violations of section 263j of this title and to restrain dealers and distributors of electronic products from selling or otherwise disposing of electronic products which do not conform to an applicable standard prescribed pursuant to section 263f of this title except when such products are disposed of by returning them to the distributor or manufacturer from whom they were obtained. The district courts of the United States shall also have jurisdiction in accordance with section 1355 of Title 28 to enforce the provisions of subsection (b) of this section.

(b) Penalties.

(1) Any person who violates section 263j of this title shall be subject to a civil penalty of not more than $1,000. For purposes of this subsection, any such violation shall with respect to each electronic product involved, or with respect to each act or omission made unlawful by section 263j of this title constitute a separate violation, except that the maximum civil penalty imposed on any person under this subsection for any related series of violations shall not exceed $300,000.

(2) Any such civil penalty may on application be remitted or mitigated by the Secretary. In determining the amount of such penalty, or whether it should be remitted or mitigated and in what amount, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be deducted from any sums owing by the United States to the person charged.

(c) Venue; process.

Actions under subsections (a) and (b) of this section may be brought in the district court of the United States for the district wherein any act or omission or transaction constituting the violation occurred, or in such court for the district where the defendant is found or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever defendant may be found.

(d) Warnings.

Nothing in this subpart shall be construed as requiring the Secretary to report for the institution of proceedings minor violations of this subpart whenever he believes that the public interest will be adequately served by a suitable written notice or warning.

(e) Compliance with regulations.

Except as provided in the first sentence of section 263n of this title, compliance with this subpart or any regulations issued thereunder shall not relieve any person from liability at common law or under statutory law.

(f) Additional remedies.

The remedies provided for in this subpart shall be in addition to not in substitution for any other reme-

dies provided by law. (July 1, 1944, ch. 373, title III, § 360C, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1184.)

§ 263*l*. Annual report.

(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this subpart for the preceding calendar year. Such report shall include—

(1) a thorough appraisal (including statistical analyses, estimates, and long-term projections) of the incidence of biological injury, and effects, including genetic effects, to the population resulting from exposure to electronic product radiation, with a breakdown, insofar as practicable, among the various sources of such radiation;

(2) a list of Federal electronic product radiation control standards prescribed or in effect in such year, with identification of standards newly prescribed during such year;

(3) an evaluation of the degree of observance of applicable standards, including a list of enforcement actions, court decisions, and compromises of alleged violations by location and company name;

(4) a summary of outstanding problems confronting the administration of this subpart in order of priority;

(5) an analysis and evaluation of research activities completed as a result of Government and private sponsorship, and technological progress for safety achieved during such year;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this subpart;

(7) the extent to which technical information was disseminated to the scientific, commercial, and labor community and consumer-oriented information was made available to the public; and

(8) the extent of cooperation between Government officials and representatives of industry and other interested parties in the implementation of this subpart including a log or summary of meetings held between Government officials and representatives of industry and other interested parties.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of electronic product radiation control and to strengthen the national electronic product radiation control program. (July 1, 1944, ch. 373, title III, § 360D, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1185.)

§ 263m. Federal-State cooperation.

The Secretary is authorized (1) to accept from State and local authorities engaged in activities related to health or safety or consumer protection, on a reimbursable basis or otherwise, any assistance in the administration and enforcement of this subpart which he may request and which they may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and (2) he may, for the purpose of conducting examinations, investigations, and inspections, commission any officer or employee of any such authority as an officer of the Department. (July 1, 1944, ch. 373, title III, § 360E, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1186.)

§ 263n. State standards.

Whenever any standard prescribed pursuant to section 263f of this title with respect to an aspect of performance of an electronic product is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, any standard which is applicable to the same aspect of performance of such product and which is not identical to the Federal standard. Nothing in this subpart shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a requirement with respect to emission of radiation from electronic products procured for its own use if such requirement imposes a more restrictive standard than that required to comply with the otherwise applicable Federal standard. (July 1, 1944, ch. 373, title III, § 360F, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1186.)

3. Hazardous Materials Transportation Control

49 U.S.C. 1761–1762

(See Hazardous Materials Transportation Control under title II *Environment Generally*)

4. Nuclear Information to Congress

42 U.S.C. 2252(b)

(b) The members of the Joint Committee who are Members of the Senate and the members of the Joint Committee who are Members of the House of Representatives shall, on or before June 30 of each year, report to their respective Houses on the development, use, and control of nuclear energy for the common defense and security and for peaceful purposes. Each report shall provide facts and information available

to the Joint Committee concerning nuclear energy which will assist the appropriate committees of the Congress and individual members in the exercise of informed judgment on matters of weaponry; foreign policy; defense, international trade; and in respect to the expenditure and appropriation of Government revenues. Each report shall be presented formally under circumstances which provide for clarification and discussion by the Senate and the House of Representatives. In recognition of the need for public understanding, presentations of the reports shall be made to the maximum extent possible in open sessions and by means of unclassified written materials. (As amended Dec. 6, 1974, Pub. L. 93–514, 88 Stat. 1611.)

AMENDMENTS

1974—Pub. L. 93–514 designated existing provisions as subsec. (a) and added subsec. (b).

5. Transportation of Hazardous Materials, Including Radioactive Substances

18 U.S.C. 831–836

Sec.
831. Definitions.
832. Transportation of explosives, radioactive materials, etiologic agents, and other dangerous articles.
833. Marking packages containing explosives and other dangerous articles.
834. Regulation by Interstate Commerce Commission.
835. Administration.
836. Transportation of fireworks into State prohibiting sale or use.

AMENDMENTS

1970—Pub. L. 91–452, title XI, § 1106(b)(2), Oct. 15, 1970, 84 Stat. 960, struck out item 837.

1960—Pub. L. 86–710, Sept. 6, 1960, 74 Stat. 808, substituted "Other Dangerous Articles" for "Combustibles" in the chapter heading, "explosives, radioactive materials, etiologic agents, and other dangerous articles" for "dynamite, powder and fuses" in item 832, "Marking packages containing explosives and other dangerous articles" for "Transportation of nitroglycerin" in item 833, "Regulation by Interstate Commerce Commission" for "Marking packages containing explosives" in item 834, and "Administration" for "Regulations by Interstate Commerce Commission" in item 835.

Pub. L. 86–449, title II, § 204, May 6, 1960, 74 Stat. 88, added item 837.

1954—Act June 4, 1954, ch. 261, § 2, 68 Stat. 171, added item 836.

§ 831. Definitions.

As used in this chapter—

Unless otherwise indicated, "carrier" means any person engaged in the transportation of passengers or property by land, as a common, contract, or private carrier, or freight forwarder as those terms are used in the Interstate Commerce Act, as amended, and officers, agents, and employees of such carriers.

"Person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"For-hire carrier" includes common and contract carriers.

"Shipper" shall be construed to include officers, agents, and employees of shippers.

"Interstate and foreign commerce" means commerce between a point in one State and a point in another State, between points in the same State through another State or through a foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country or in a Territory or possession of the United States, but only insofar as such commerce takes place in the United States. The term "United States" means all the States and the District of Columbia.

"State" includes the District of Columbia.

"Detonating fuzes" means fuzes used in military service to detonate the explosive charges of military projectiles, mines, bombs, or torpedoes.

"Fuzes" means devices used in igniting the explosive charges of projectiles.

"Fuses" means the slow-burning fuses used commercially to convey fire to an explosive combustible mass.

"Fusees" means the fusees ordinarily used on steamboats, railroads, and motor carriers as night signals.

"Radioactive materials" means any materials or combination of materials that spontaneously emit ionizing radiation.

"Etiologic agents" means the causative agent of such diseases as may from time to time be listed in regulations governing etiologic agents prescribed by the Interstate Commerce Commission under section 834 of this chapter. (June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 808; July 27, 1965, Pub. L. 89–95, 79 Stat. 285.)

AMENDMENTS

1965—Pub. L. 89–95 struck out "other than pipelines," following "by land," in the definition of "carrier".

1960—Pub. L. 86–710 inserted definitions of "carrier", "person", "for-hire carrier", "shipper", "interstate and foreign commerce", "United States", "State", "radioactive materials", and "etiologic agents", and substituted "military service to detonate the explosive charges of

military projectiles" for "naval or military service to detonate the high-explosive bursting charges of projectiles" under "detonating fuzes", "explosive" for "bursting" under "fuzes", included motor carriers under "fusees", and deleted "slowly or without danger to the person lighting same" following "mass" under "fuses", and the definition of "primers."

§ 832. Transportation of explosives, radioactive materials, etiologic agents, and other dangerous articles.

(a) Any person who knowingly transports, carries, or conveys within the United States, any dangerous explosives, such as and including, dynamite, blasting caps, detonating fuzes, black powder, gunpowder, or other like explosive, or any radioactive materials, or etiologic agents, on or in any passenger car or passenger vehicle of any description operated in the transportation of passengers by any for-hire carrier engaged in interstate or foreign commerce, by land, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from a violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both: *Provided, however,* That such explosives, radioactive materials, or etiologic agents may be transported on or in such car or vehicle whenever the Interstate Commerce Commission finds that an emergency requires an expedited movement, in which case such emergency movements shall be made subject to such regulations as the Commission may deem necessary or desirable in the public interest in each instance: *Provided further,* That under this section it shall be lawful to transport on or in any such car or vehicle, small quantities of explosives, radioactive materials, etiologic agents, or other dangerous commodities of the kinds, in such amounts, and under such conditions as may be determined by the Interstate Commerce Commission to involve no appreciable danger to persons or property: *And provided further,* That it shall be lawful to transport on or in any such car or vehicle such fusees, torpedoes, rockets, or other signal devices as may be essential to promote safety in the operation of any such car or vehicle on or in which transported. This section shall not prevent the transportation of military forces with their accompanying munitions of war on passenger-equipment cars or vehicles.

(b) No person shall knowingly transport, carry or convey within the United States liquid nitroglycerin, fulminate in bulk in dry condition, or other similarly dangerous explosives, or radioactive materials, or etiologic agents, on or in any car or vehicle of any description operated in the transportation of passengers or property by any carrier engaged in interstate or foreign commerce, by land, except under such rules and regulations as the Commission shall specifically prescribe with respect to the safe transportation of such commodities. The Commission shall from time to time determine and prescribe what explosives are "other similarly dangerous explosives", and may prescribe the route or routes over which such explosives, radioactive materials, or etiologic agents shall be transported. Any person who violates this provision, or any regulation prescribed hereunder by the Interstate Commerce Commission, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from a violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) Any shipment of radioactive materials made by or under the direction or supervision of the Atomic Energy Commission or the Department of Defense which is escorted by personnel specially designated by or under the authority of the Atomic Energy Commission or the Department of Defense, as the case may be, for the purpose of national security, shall be exempt from the requirements of sections 831—835 of this chapter and the rules and regulations prescribed thereunder. In the case of any shipment of radioactive materials made by or under the direction or supervision of the Atomic Energy Commission or the Department of Defense, which is not so escorted by specially designated personnel, certification upon the bill of lading by or under the authority of the Atomic Energy Commission or the Department of Defense, as the case may be, that the shipment contains radioactive materials shall be conclusive as to content, and no further description shall be necessary or required; but each package, receptacle, or other container in such unescorted shipment shall on the outside thereof be plainly marked "radioactive materials", and shall not be opened for inspection by the carrier. (June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 809.)

AMENDMENTS

1960—Pub. L. 86–710 substituted "explosives, radioactive materials, etiologic agents, and other dangerous articles" for "dynamite, powder, and fuses" in the catchline, redesignated existing provisions as subsec. (a), and therein added provisions permitting shipments of pro- Interstate Commerce Commission regulation, and carscribed items on passenger cars, in an emergency, under riage of such articles in small amounts under prescribed conditions, and of rockets and signal devices necessary to the safe operation of the vehicle, substituted "within the United States, any dangerous explosives" for "within the limits of jurisdiction of the United States, any high explosive", included radioactive materials, and etiologic agents, and extended application from common carriers to any for-hire carrier operating passenger cars or vehicles in the transportation of passengers by land, and deleted provisions which made it lawful to transport smokeless powder, primers, non-detonating fuses, fireworks, and samples for laboratory examination each not exceeding one-half pound in weight, nor exceeding twenty samples in a single vehicle, and added subsecs. (b) and (c).

§ 833. Marking packages containing explosives and other dangerous articles.

Any person who knowingly delivers to any carrier engaged in interstate or foreign commerce by land or water, and any person who knowingly carries on or in any car or vehicle of any description operated in the transportation of passengers or property by any carrier engaged in interstate or foreign commerce, by land, any explosive, or other dangerous article, specified in or designated by the Interstate Commerce Commission pursuant to section 834 of

this chapter, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or any person who so delivers any such article without informing such carrier in writing of the true character thereof, at the time such delivery is made, or without plainly marking on the outside of every package containing explosives or other dangerous articles the contents thereof, if such marking is required by regulations prescribed by the Interstate Commerce Commission, shall be fined not more than $1,000 or imprisoned not more than one year, or both, and, if the death or bodily injury of any person results from the violation of this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. (June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 810.)

AMENDMENTS

1960—Pub. L. 86–710 substituted provisions for marking packages containing explosives and other dangerous articles for provisions relating to transportation of nitroglycerin.

§ 834. Regulations by Interstate Commerce Commission.

(a) The Interstate Commerce Commission shall formulate regulations for the safe transportation within the United States of explosives and other dangerous articles, including radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous substances, which shall be binding upon all carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land, and upon all shippers making shipments of explosives or other dangerous articles via any carrier engaged in interstate or foreign commerce by land or water.

(b) The Commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Before adopting any regulations relating to radioactive materials the Interstate Commerce Commission shall advise and consult with the Atomic Energy Commission.

(c) Such regulations shall be in accord with the best-known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport.

(d) Such regulations, as well as all changes or modifications thereof, shall, unless a shorter time is specified by the Commission, take effect ninety days after their formulation and publication by the Commission and shall be in effect until reversed, set aside, or modified.

(e) In the execution of sections 831—835, inclusive, of this chapter the Commission may utilize the services of carrier and shipper associations, including the Bureau for the Safe Transportation of Explosives and other Dangerous Articles, and may avail itself of the advice and assistance of any department, commission, or board of the Federal Government, and of State and local governments, but no official or employee of the United States shall receive any additional compensation for such service except as now permitted by law.

(f) Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. (June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 810.)

AMENDMENTS

1960—Pub. L. 86–710 substituted provisions relating to regulations by the Interstate Commerce Commission for provisions relating to marking packages containing explosives.

§ 835. Administration.

(a) The Interstate Commerce Commission is authorized and directed to administer, execute, and enforce all provisions of sections 831—835, inclusive, of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration, and to employ such officers and employees as may be necessary to carry out these functions.

(b) The Commission is authorized to make such studies and conduct such investigations, obtain such information, and hold such hearings as it may deem necessary or proper to assist it in exercising any authority provided in sections 831—835, inclusive, of this chapter. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(c) In administering and enforcing the provisions of sections 831—835, inclusive, of this chapter and the regulations prescribed thereunder the Commission shall have and exercise all the powers conferred upon it by the Interstate Commerce Act, including procedural and investigative powers and the power to examine and inspect records and properties of carriers engaged in transporting explosives and other dangerous articles in interstate or foreign commerce and the records and properties of shippers to the extent that such records and properties pertain to the packing and shipping of explosives and other dangerous articles and the nature of such commodities. (June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 811; Oct. 15, 1970, Pub. L. 91–452, title II, § 222, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–452 struck out the provisions relating to the claiming of the privilege against self-incrimination by witnesses subpenaed before the Commission to testify or produce documents, and the applicability of the immunity provisions of the Compulsory Testimony Act, section 46 of Title 49, to such witnesses.

1960—Pub. L. 86–710 substituted provisions relating to administration for provisions relating to regulations by the Interstate Commerce Commission.

§ 836. Transportation of fireworks into State prohibiting sale or use.

Whoever, otherwise than in the course of continuous interstate transportation through any State, transports fireworks into any State, or delivers them for transportation into any State, or attempts so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a State for the use of Federal agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective States shall be applied.

As used in this section, the term "State" includes the several States, Territories, and possessions of the United States, and the District of Columbia.

This section shall be effective from and after July 1, 1954. (Added June 4, 1954, ch. 261, § 1, 68 Stat. 170.)

TITLE XI—WATER POLLUTION

1. Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loan

Ex. Order 11738, 38 F. Reg. 25161

(See Ex. Ord. 11738 under title III *Executive Orders*)

2. Administration of Permit Program (Water Pollution)

Ex. Ord. 11574

(See Executive Order 11574 under title III *Executive Orders*)

3. Basic Water and Sewer Facilities

42 U.S.C. 3101–3108

(See Basic Water and Sewer Facilities under title IX *Pollution Control, Financing*)

4. Colorado River Basin Salinity Control

Pub. L. 93–320 (88 Stat. 266)

(See Colorado River Basin Salinity Control under title XII *Water Resources*)

5. Control of Jellyfish

16 U.S.C. 1201–1205

Sec.

§ 1201. Declaration of purposes; Secretary's cooperation with and assistance to States.

For the purposes of conserving and protecting the fish and shellfish resources in the coastal waters of the United States and the Commonwealth of Puerto Rico, and promoting and safeguarding water-based recreation for present and future generations in these waters, the Secretary of the Interior is authorized to cooperate with, and provide assistance to, the States in controlling and eliminating jellyfish, commonly referred to as "sea nettles", and other such pests and in conducting research for the purposes of controlling floating seaweed in such waters. (Pub. L. 89–720, § 1, Nov. 2, 1966, 80 Stat. 1149.)

§ 1202. Authority of Secretary; studies, research, and investigations; control measures; execution of program; other actions; costs.

In carrying out the purposes of this chapter, the Secretary, in cooperation with the States and the Commonwealth of Puerto Rico, is authorized (1) to conduct, directly or by contract, such studies, research, and investigations, as he deems desirable, to determine the abundance and distribution of jellyfish and other such pests and their effects on

fish and shellfish and water-based recreation, (2) to conduct studies of control measures of such pests and of floating seaweed, (3) to carry out, based on studies made pursuant to this chapter, a program of controlling or eliminating such pests and such seaweed, and (4) to take such other actions as the Secretary deems desirable: *Provided*, That the costs of such actions shall be borne equally by the Federal Government and by the States and the Commonwealth of Puerto Rico, acting jointly or severally. (Pub. L. 89–720, § 2, Nov. 2, 1966, 80 Stat. 1149.)

§ 1203. Authorization of appropriations.

There is authorized to be appropriated not to exceed $500,000 for the fiscal year ending June 30, 1968, $750,000 for the fiscal year ending June 30, 1969, $1,000,000 for the period beginning July 1, 1969, and ending June 30, 1973, and $400,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, and June 30, 1977. (As amended Pub. L. 92–604, Oct. 31, 1972, 86 Stat. 1493.)

AMENDMENTS

1972—Pub. L. 92–604 authorized appropriations of $400,000 for fiscal years ending June 30, 1974, 1975, 1976, and 1977.

§ 1204. Compacts.

The Congress consents to any compact or agreement between any two or more States for the purpose of carrying out a program of research, study, investigation, and control of jellyfish and other such pests in the coastal waters of the United States. The right to alter, amend, or repeal this section or the consent granted herein is expressly reserved. (Pub. L. 89–720, § 4, Nov. 2, 1966, 80 Stat. 1149.)

§ 1205. General authority of Secretary for conducting studies, research, and investigations unaffected.

Nothing in this chapter shall be construed to alter, amend, repeal, modify, or diminish the present general authority of the Secretary of the Interior to conduct studies, research, and investigations related to the mission of the Department of the Interior. (Pub. L. 89–720, § 5, Nov. 2, 1966, 80 Stat. 1149.)

6. Control of Obnoxious Plants in Navigable Waters

33 U.S.C. 610

§ 610. Control of aquatic plant growths.

(a) There is hereby authorized a comprehensive program to provide for control and progressive eradication of water-hyacinth, alligatorweed, Eurasian water milfoil, and other obnoxious aquatic plant growths, from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States, in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes, including continued research for development of the most effective and economic control measures, to be administered by the Chief of Engineers, under the direction of the Secretary of the Army, in cooperation with other Federal and State agencies. Local interests shall agree to hold and save the United States free from claims that may occur from control operations and to participate to the extent of 30 per centum of the cost of such operations. Costs for research and planning undertaken pursuant to the authorities of this section shall be borne fully by the Federal Government.

(b) There are authorized to be appropriated such amounts, not in excess of $5,000,000 annually, as may be necessary to carry out the provisions of this section. Any such funds employed for control operations shall be allocated by the Chief of Engineers on a priority basis, based upon the urgency and need of each area, and the availability of local funds. (Pub. L. 85–500, title I, § 104, July 3, 1958, 72 Stat. 300; Pub. L. 89–298, title III, § 302, Oct. 27, 1965, 79 Stat. 1092.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–298 designated part of existing provisions as subsec. (a), substituting "comprehensive program" and "other allied waters of the United States" for "comprehensive project" and "other allied waters in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas", providing for control and eradication of Eurasian water milfoil, and deleting "in accordance with the report of the Chief of Engineers, published as House Document Numbered 37, Eighty-fifth Congress" following "Federal and State agencies".

Subsec. (b). Pub. L. 89–298 designated part of existing provisions as subsec. (b), substituting the appropriations authorization of $5,000,000 annually as the first sentence for former provisions which authorized "an estimated additional cost for the expanded program over that now underway of $1,350,000 annually for five years, of which 70 per centum, presently estimated at $945,000, shall be borne by the United States and 30 per centum, presently estimated at $405,000, by local interests" and incorporating the former second proviso in the second sentence.

7. Control of Starfish

16 U.S.C. 1211–1213

Sec
1211. Congressional statement of purpose.
1212. Investigation and control of crown of thorns starfish.
1213. Authorization of appropriations.

§ 1211. Congressional statement of purpose.

For the purpose of conserving and protecting coral reef resources of the tropical islands of interest and

concern to the United States in the Pacific and safeguarding critical island areas from possible erosion and to safeguard future recreational and esthetic uses of Pacific coral reefs, the Secretary of the Interior and the Secretary of the Smithsonian Institution are authorized to cooperate with and provide assistance to the governments of the State of Hawaii, the territories and possessions of the United States, including Guam and American Samoa, the Trust Territory of the Pacific Islands, and other island possessions of the United States, in the study and control of the seastar "Crown of Thorns" (Acanthaster planci). (Pub. L. 91–427, § 1, Sept. 26, 1970, 84 Stat. 884.)

§ 1212. Investigation and control of crown of thorns starfish.

In carrying out the purposes of this chapter, the Secretary of the Interior and the Secretary of the Smithsonian Institution are authorized to—

(1) conduct such studies, research, and investigations, as they deem desirable to determine the causes of the population increase of the "Crown of Thorns", their effects on corals and coral reefs, and the stability and regeneration of reefs following predation;

(2) to monitor areas where the "Crown of Thorns" may be increasing in numbers and to determine future needs for control;

(3) to develop improved methods of control and to carry out programs of control in areas where these are deemed necessary; and

(4) to take such other actions as deemed desirable to gain an understanding of the ecology and control of the seastar "Crown of Thorns".

(Pub. L. 91–427, § 2, Sept. 26, 1970, 84 Stat. 884.)

§ 1213. Authorization of appropriations.

For the purpose of carrying out the provisions of this chapter, there is authorized to be appropriated for the period commencing on September 26, 1970, and ending June 30, 1975, not to exceed $4,500,000. (Pub. L. 91–427, § 3, Sept. 26, 1970, 84 Stat. 884.)

8. Cropland Adjustment for Pollution Control

7 U.S.C. 1838

(See Cropland Adjustment for Pollution Control under title IX *Pollution Control, Financing*)

9. Environment Financing Authority

33 U.S.C. 1281 note

(See Environmental Financing Act of 1972 under title IX *Pollution Control, Financing*)

10. Intervention on the High Seas Act—Oil

Pub. L. 93–248 (88 Stat. 8)

(See Intervention on the High Seas Act under title VIII *Oceanography*)

11. Ocean Dumping

33 U.S.C. 1401–1444

(See Ocean Dumping under title VIII *Oceanography*)

12. Oil Pollution Act of 1961

33 U.S.C. 1001–1015

(See Oil Pollution Act of 1961 under title VIII *Oceanography*)

13. Pollution Control in Navigable Waters

33 U.S.C. 1251–1376

SUBCHAPTER III.—STANDARDS AND ENFORCEMENT

SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS

§ 1251. Congressional declaration of goals and policy.

(a) The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international wa-

ters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government. (June 30, 1948, ch. 758, title I, § 101, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 816.)

§ 1252. Comprehensive programs for water pollution control.

(a) The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b)(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage for regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, esthetics, and fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefit of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this chapter shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Power Commission for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

(c)(1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after October 18, 1972, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control plan for a basin or portion thereof.

(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control plan for the basin or portion thereof which—

(A) is consistent with any applicable water quality standards effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council, any areawide waste management plans developed pursuant to section 1288 of this title, and any State

plan developed pursuant to section 1313(e) of this title.

(3) For the purposes of this subsection the term "basin" includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estauaries, bays, lakes, and portions thereof a well as the lands drained thereby. (June 30, 1948, ch. 758, title I, § 102, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 817.)

§ 1253. Interstate cooperation and uniform laws.

(a) The Administrator shall encourage cooperative activities by the States for the prevention, reduction, and elimination of pollution, encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention, reduction, and elimination of pollution; and encourage compacts between States for the prevention and control of pollution.

(b) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the Congress. (June 30, 1948, ch. 758, title I, § 103, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 818.)

§ 1254. Research, investigations, training, and information.

(a) Establishment of national programs; cooperation; investigations; water quality surveillance system; reports.

The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution;

(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

(3) conduct, in cooperation with State water pollution control agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations;

(4) establish advisory committees composed of recognized experts in various aspects of pollution and representatives of the public to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research;

(5) in cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 1375 of this title; and

(6) initiate and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulation under this chapter; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974.

(b) Authorized activities of Administrator.

In carrying out the provisions of subsection (a) of this section the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(3) make grants to State water pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals, for purposes stated in paragraph (1) of subsection (a) of this section;

(4) contract with public or private agencies, institutions, organizations, and individuals, without regard to section 529 of Title 31 and section 5 of Title 41, referred to in paragraph (1) of subsection (a) of this section;

(5) establish and maintain research fellowships at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention, reduction, and elimination thereof; and

(7) develop effective and practical processes, methods, and prototype devices for the prevention, reduction, and elimination of pollution.

(c) Research and studies on harmful effects of pollutants; cooperation with Secretary of Health, Education, and Welfare.

In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants. In order to avoid duplication of effort, the Administrator shall, to the extent practicable, conduct such research in cooperation with and through the facilities of the Secretary of Health, Education, and Welfare.

(d) Sewage treatment; identification and measurement of effects of pollutants; augmented streamflow.

In carrying out the provisions of this section the Administrator shall develop and demonstrate under varied conditions (including conducting such basic and applied research, studies, and experiments as may be necessary):

(1) Practicable means of treating municipal sewage, and other waterborne wastes to implement the requirements of section 1281 of this title;

(2) Improved methods and procedures to identify and measure the effects of pollutants, including those pollutants created by new technological developments; and

(3) Methods and procedures for evaluating the effects on water quality of augmented streamflows to control pollution not susceptible to other means of prevention, reduction, or elimination.

(e) Field laboratory and research facilities.

The Administrator shall establish, equip, and maintain field laboratory and research facilities, including, but not limited to, one to be located in the northeastern area of the United States, one in the Middle Atlantic area, one in the southeastern area, one in the midwestern area, one in the southwestern area, one in the Pacific Northwest, and one in the State of Alaska, for the conduct of research, investigations, experiments, field demonstrations and studies, and training relating to the prevention, reduction and elimination of pollution. Insofar as practicable, each such facility shall be located near institutions of higher learning in which graduate training in such research might be carried out. In conjunction with the development of criteria under section 1343 of this title, the Administrator shall construct the facilities authorized for the National Marine Water Quality Laboratory established under this subsection.

(f) Great Lakes water quality research.

The Administrator shall conduct research and technical development work, and make studies, with respect to the quality of the waters of the Great Lakes, including an analysis of the present and projected future water quality of the Great Lakes under varying conditions of waste treatment and disposal, an evaluation of the water quality needs of those to be served by such waters, an evaluation of municipal, industrial, and vessel waste treatment and disposal practices with respect to such waters, and a study of alternate means of solving pollution problems (including additional waste treatment measures) with respect to such waters.

(g) Treatment works pilot training programs; employment needs forecasting; training projects and grants; research fellowships; technical training; report to the President and transmittal to Congress.

(1) For the purpose of providing an adequate supply of trained personnel to operate and maintain existing and future treatment works and related activities, and for the purpose of enhancing substantially the proficiency of those engaged in such activities, the Administrator shall finance pilot programs, in cooperation with State and interstate agencies, municipalities, educational institutions, and other organizations and individuals, of manpower development and training and retraining of persons in, on entering into, the field of operation and maintenance of treatment works and related activities. Such program and any funds expended for such a program shall supplement, not supplant, other manpower and training programs and funds available for the purposes of this paragraph. The Administrator is authorized, under such terms and conditions as he deems appropriate, to enter into agreements with one or more States, acting jointly or severally, or with other public or private agencies or institutions for the development and implementation of such a program.

(2) The Administrator is authorized to enter into agreements with public and private agencies and institutions, and individuals to develop and maintain an effective system for forecasting the supply of, and demand for, various professional and other occupational categories needed for the prevention, reduction, and elimination of pollution in each region, State, or area of the United States and, from time to time, to publish the results of such forecasts.

(3) In furtherance of the purposes of this chapter, the Administrator is authorized to—

(A) make grants to public or private agencies and institutions and to individuals for training projects, and provide for the conduct of training by contract with public or private agencies and institutions and with individuals without regard to section 529 of Title 31 and section 5 of Title 41;

(B) establish and maintain research fellowships in the Environmental Protection Agency with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most promising research fellows; and

(C) provide, in addition to the program established under paragraph (1) of this subsection, training in technical matters relating to the causes, prevention, reduction, and elimination of pollution for personnel of public agencies and other persons with suitable qualifications.

(4) The Administrator shall submit, through the President, a report to the Congress not later than December 31, 1973, summarizing the actions taken under this subsection and the effectiveness of such actions, and setting forth the number of persons trained, the occupational categories for which training was provided, the effectiveness of other Federal, State, and local training programs in this field, together with estimates of future needs, recommendations on improving training programs, and such

other information and recommendations, including legislative recommendations, as he deems appropriate.

(h) Lake pollution.

The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

(i) Oil pollution control studies.

The Administrator, in cooperation with the Secretary of the department in which the Coast Guard is operating, shall—

(1) engage in such research, studies, experiments, and demonstrations as he deems appropriate, relative to the removal of oil from any waters and to the prevention, control, and elimination of oil and hazardous substances pollution;

(2) publish from time to time the results of such activities; and

(3) from time to time, develop and publish in the Federal Register specifications and other technical information on the various chemical compounds used in the control of oil and hazardous substances spills.

In carrying out this subsection, the Administrator may enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

(j) Solid waste disposal equipment for vessels.

The Secretary of the department in which the Coast Guard is operating shall engage in such research, studies, experiments, and demonstrations as he deems appropriate relative to equipment which is to be installed on board a vessel and is designed to receive, retain, treat, or discharge human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes wtih particular emphasis on equipment to be installed on small recreational vessels. The Secretary of the department in which the Coast Guard is operating shall report to Congress the results of such research, studies, experiments, and demonstrations prior to the effective date of any regulations established under section 1322 of this title. In carrying out this subsection the Secretary of the department in which the Coast Guard is operating may enter into contracts with, or make grants to, public or private organizations and individuals.

(k) Land acquisition.

In carrying out the provisions of this section relating to the conduct by the Administrator of demonstration projects and the development of field laboratories and research facilities, the Administrator may acquire land and interests therein by purchase, with appropriated or donated funds, by donation, or by exchange for acquired or public lands under his jurisdiction which he classifies as suitable for disposition. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Administrator as the circumstances require.

(l) Collection and dissemination of scientific knowledge on effects and control of pesticides in water.

(1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than January 1, 1973, develop and issue to the States for the purpose of carrying out this chapter the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

(2) The President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct studies and investigations of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The President shall submit reports, from time to time, on such investigations to Congress together with his recommendations for any necessary legislation.

(m) Waste oil disposal study.

(1) The Administrator shall, in an effort to prevent degradation of the environment from the disposal of waste oil, conduct a study of (A) the generation of used engine, machine, cooling, and similar waste oil, including quantities generated, the nature and quality of such oil, present collecting methods and disposal practices, and alternate uses of such oil; (B) the long-term, chronic biological effects of the disposal of such waste oil; and (C) the potential market for such oils, including the economic and legal factors relating to the sale of products made from such oils, the level of subsidy, if any, needed to encourage the purchase by public and private nonprofit agencies of products from such oil, and the practicability of Federal procurement, on a priority basis, of products made from such oil. In conducting such study, the Administrator shall consult with affected industries and other persons.

(2) The Administrator shall report the preliminary results of such study to Congress within six months after October 18, 1972, and shall submit a final report to Congress within 18 months after such date.

(n) Comprehensive studies of effects of pollution on estuaries and estuarine zones; reports.

(1) The Administrator shall, in cooperation with the Secretary of the Army, the Secretary of Agriculture, the Water Resources Council, and with other appropriate Federal, State, interstate, or local public bodies and private organizations, institutions, and individuals, conduct and promote, and encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones

of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes. Such studies shall also consider the effect of demographic trends, the exploitation of mineral resources and fossil fuels, land and industrial development, navigation, flood and erosion control, and other uses of estuaries and estuarine zones upon the pollution of the waters therein.

(2) In conducting such studies, the Administrator shall assemble, coordinate, and organize all existing pertinent information on the Nation's estuaries and estuarine zones; carry out a program of investigations and surveys to supplement existing information in representative estuaries and estuarine zones; and identify the problems and areas where further research and study are required.

(3) The Administrator shall submit to Congress, from time to time, reports of the studies authorized by this subsection but at least one such report during any three year period. Copies of each such report shall be made available to all interested parties, public and private.

(4) For the purpose of this subsection, the term "estuarine zones" means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, harbors, lagoons, inshore waters, and channels, and the term "estuary" means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage.

(o) Methods of reducing total flow of sewage and unnecessary water consumption; reports.

(1) The Administrator shall conduct research and investigations on devices, systems, incentives, pricing policy, and other methods of reducing the total flow of sewage, including, but not limited to, unnecessary water consumption in order to reduce the requirements for, and the costs of, sewage and waste treatment services. Such research and investigations shall be directed to develop devices, systems, policies, and methods capable of achieving the maximum reduction of unnecessary water consumption.

(2) The Administrator shall report the preliminary results of such studies and investigations to the Congress within one year after October 18, 1972, and annually thereafter in the report required under subsection (a) of section 1375 of this title. Such report shall include recommendations for any legislation that may be required to provide for the adoption and use of devices, systems, policies, or other methods of reducing water consumption and reducing the total flow of sewage. Such report shall include an estimate of the benefits to be derived from adoption and use of such devices, systems, policies, or other methods and also shall reflect estimates of any increase in private, public, or other cost that would be occasioned thereby.

(p) Agricultural pollution.

In carrying out the provisions of subsection (a) of this section the Administrator shall, in cooperation with the Secretary of Agriculture, other Federal agencies, and the States, carry out a comprehensive study and research program to determine new and improved methods and the better application of existing methods of preventing, reducing, and eliminating pollution from agriculture, including the legal, economic, and other implications of the use of such methods.

(q) Sewage in rural areas.

(1) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems.

(2) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods for the collection and treatment of sewage and other liquid wastes combined with the treatment and disposal of solid wastes.

(r) Research grants to colleges and universities.

The Administrator is authorized to make grants to colleges and universities to conduct basic research into the structure and function of fresh water aquatic ecosystems, and to improve understanding of the ecological characteristics necessary to the maintenance of the chemical, physical, and biological integrity of freshwater aquatic ecosystems.

(s) River Study Centers.

The Administrator is authorized to make grants to one or more institutions of higher education (regionally located and to be designated as "River Study Centers") for the purpose of conducting and reporting on interdisciplinary studies on the nature of river systems, including hydrology, biology, ecology, economics, the relationship between river uses and land uses, and the effects of development within river basins on river systems and on the value of water resources and water related activities. No such grant in any fiscal year shall exceed $1,000,000.

(t) Thermal discharges.

The Administrator shall, in cooperation with State and Federal agencies and public and private organizations, conduct continuing comprehensive studies of the effects and methods of control of thermal discharges. In evaluating alternative methods of control the studies shall consider (1) such data as are available on the latest available technology, economic feasibility including cost-effectiveness analysis, and (2) the total impact on the environment, considering not only water quality but also air quality, land use, and effective utilization and conservation of fresh water and other natural resources. Such studies shall consider methods of minimizing adverse effects and maximizing beneficial effects of thermal discharges. The results of these studies shall be reported by the Administrator as soon as practicable,

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but not later than 270 days after October 18, 1972, and shall be made available to the public and the States, and considered as they become available by the Administrator in carrying out section 1326 of this title and by the States in proposing thermal water quality standards.

(u) Authorization of appropriations.

There is authorized to be appropriated (1) $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, for carrying out the provisions of this section other than subsections (g) (1) and (2), (p), (r), and (t) of this section; (2) not to exceed $7,500,000 for fiscal years 1973, 1974, and 1975, for carrying out the provisions of subsection (g)(1) of this section; (3) not to exceed $2,500,000 for fiscal years 1973, 1974, and 1975, for carrying out the provisions of subsection (g)(2) of this section; (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p) of this section; (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r) of this section; and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t) of this section. (June 30, 1948, ch. 758, title I, § 104, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 819, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(1), 87 Stat. 906; Jan. 2, 1975, Pub. L. 93-592, § 1, 88 Stat. 1924.)

AMENDMENTS

1975—Subsec. (u)(1). Pub. L. 93-592, § 1(a), substituted "the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975," for "and the fiscal year ending June 30, 1974,".

Subsec. (u)(2). Pub. L. 93-592, § 1(b), substituted "fiscal years 1973, 1974, and 1975" for "fiscal years 1973 and 1974".

Subsec. (u)(3). Pub. L. 93-592, § 1(c), substituted "fiscal years 1973, 1974, and 1975" for "fiscal year 1973".

Subsec. (u)(4). Pub. L. 93-592, § 1(d), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

Subsec. (u)(5). Pub. L. 93-592, § 1(e), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

Subsec. (u)(6). Pub. L. 93-592, § 1(f), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

1973—Subsec. (u)(2). Pub. L. 93-207 substituted "fiscal years 1973 and 1974" for "fiscal year 1973".

§ 1255. Grants for research and development.

(a) Demonstration projects covering storm waters, advanced waste treatment and water purification methods, and joint treatment systems for municipal and industrial wastes.

The Administrator is authorized to conduct in the Environmental Protection Agency, and to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of—

(1) any project which will demonstrate a new or improved method of preventing, reducing, and eliminating the discharge into any waters of pollutants from sewers which carry storm water or both storm water and pollutants; or

(2) any project which will demonstrate advanced waste treatment and water purification methods (including the temporary use of new or improved chemical additives which provide substantial immediate improvements to existing treatment processes), or new or improved methods of joint treatment systems for municipal and industrial wastes;

and to include in such grants such amounts as are necessary for the purpose of reports, plans, and specifications in connection therewith.

(b) Demonstration projects for advanced treatment and environmental enhancement techniques to control pollution in river basins.

The Administrator is authorized to make grants to any State or States or interstate agency to demonstrate, in river basins or portions thereof, advanced treatment and environmental enhancement techniques to control pollution from all sources, within such basins or portions thereof, including nonpoint sources, together with in stream water quality improvement techniques.

(c) Research and demonstration projects for prevention of water pollution by industry.

In order to carry out the purposes of section 1311 of this title, the Administrator is authorized to (1) conduct in the Environmental Protection Agency, (2) make grants to persons, and (3) enter into contracts with persons, for research and demonstration projects for prevention of pollution of any waters by industry including, but not limited to, the prevention, reduction, and elimination of the discharge of pollutants. No grant shall be made for any project under this subsection unless the Administrator determines that such project will develop or demonstrate a new or improved method of treating industrial wastes or otherwise prevent pollution by industry, which method shall have industrywide application.

(d) Accelerated and priority development of waste management and waste treatment methods and identification and measurement methods.

In carrying out the provisions of this section, the Administrator shall conduct, on a priority basis, an accelerated effort to develop, refine, and achieve practical application of:

(1) waste management methods applicable to point and nonpoint sources of pollutants to eliminate the discharge of pollutants, including, but not limited to, elimination of runoff of pollutants and the effects of pollutants from inplace or accumulated sources;

(2) advanced waste treatment methods applicable to point and nonpoint sources, including inplace or accumulated sources of pollutants, and methods for reclaiming and recycling water and confining pollutants so they will not migrate to cause water or other environmental pollution; and

(3) improved methods and procedures to identify and measure the effects of pollutants on the chemical, physical, and biological integrity of water, including those pollutants created by new technological developments.

(e) Research and demonstration projects covering agricultural pollution and pollution from sewage in rural areas; dissemination of information.

(1) The Administrator is authorized to (A) make, in consultation with the Secretary of Agriculture, grants to persons for research and demonstration projects with respect to new and improved methods of preventing, reducing, and eliminating pollution from agriculture, and (B) disseminate, in cooperation with the Secretary of Agriculture, such information obtained under this subsection, section 1254(p) of this title, and section 1314 of this title as will encourage and enable the adoption of such methods in the agricultural industry.

(2) The Administrator is authorized, (A) in consultation with other interested Federal agencies, to make grants for demonstration projects with respect to new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems, and (B) in cooperation with other interested Federal and State agencies, to disseminate such information obtained under this subsection as will encourage and enable the adoption of new and improved methods developed pursuant to this subsection.

(f) Limitations.

Federal grants under subsection (a) of this section shall be subject to the following limitations:

(1) No grant shall be made for any project unless such project shall have been approved by the appropriate State water pollution control agency or agencies and by the Administrator;

(2) No grant shall be made for any project in an amount exceeding 75 per centum of cost thereof as determined by the Administrator; and

(3) No grant shall be made for any project unless the Administrator determines that such project will serve as a useful demonstration for the purpose set forth in clause (1) or (2) of subsection (a) of this section.

(g) Maximum grants.

Federal grants under subsections (c) and (d) of this section shall not exceed 75 per centum of the cost of the project.

(h) Authorization of appropriations.

For the purpose of this section there is authorized to be appropriated $75,000,000 per fiscal year for the fiscal year shall be available only for the purposes of ing June 30, 1974, and the fiscal year ending June 30, 1975, and from such appropriations at least 10 per centum of the funds actually appropriated in each fiscal year shall be available only for the purposes of subsection (e) of this section. (June 30, 1948, ch. 758, title I, § 105, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 825, and amended June 2, 1975, Pub. L. 93-592, § 2, 88 Stat. 1925.)

AMENDMENTS

1975—Subsec. (h). Pub. L. 93-592 substituted "the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975," for "and the fiscal year ending June 30, 1974,".

§ 1256. Grants for pollution control programs.

(a) Authorization of appropriations for state and interstate programs.

There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purpose of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975;

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

(b) Allotments.

From the sums appropriated in any fiscal year, the Administrator shall make allotments to the several States and interstate agencies in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States.

(c) Maximum annual payments.

The Administrator is authorized to pay to each State and interstate agency each fiscal year either—

(1) the allotment of such State or agency for such fiscal year under subsection (b) of this section, or

(2) the reasonable costs as determined by the Administrator of developing and carrying out a pollution program by such State or agency during such fiscal year,

which ever amount is the lesser.

(d) Limitations.

No grant shall be made under this section to any State or interstate agency for any fiscal year when the expenditure of non-Federal funds by such State or interstate agency during such fiscal year for the recurrent expenses of carrying out its pollution control program are less than the expenditure by such State or interstate agency of non-Federal funds for such recurrent program expenses during the fiscal year ending June 30, 1971.

(e) Grants prohibited to states not establishing water quality monitoring procedures or adequate emergency and contingency plans.

Beginning in fiscal year 1974 the Administrator shall not make any grant under this section to any State which has not provided or is not carrying out as a part of its program—

(1) the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of navigable waters and to the extent practicable, ground waters including biological monitoring; and provision for annually updating such data and including it in the report required under section 1315 of this title;

(2) authority comparable to that in section 1364 of this title and adequate contingency plans to implement such authority.

(f) Conditions.

Grants shall be made under this section on condition that—

(1) Such State (or interstate agency) files with the Administrator within one hundred and twenty days after October 18, 1972:

(A) a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works; and

(B) such additional information, data, and reports as the Administrator may require.

(2) No federally assumed enforcement as defined in section 1319(a)(2) of this title is in effect with respect to such State or interstate agency.

(3) Such State (or interstate agency) submits within one hundred and twenty days after October 18, 1972, and before October 1 of each year thereafter for the Administrator's approval its program for the prevention, reduction, and elimination of pollution in accordance with purposes and provisions of this chapter in such form and content as the Administrator may prescribe.

(g) Reallotment of unpaid allotments.

Any sums allotted under subsection (b) of this section in any fiscal year which are not paid shall be reallotted by the Administrator in accordance with regulations promulgated by him. (June 30, 1948, ch. 758, title I, § 106, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 827.)

§ 1257. Mine water pollution control demonstrations.

(a) Comprehensive approaches to elimination or control of mine water pollution.

The Administrator in cooperation with the Appalachian Regional Commission and other Federal agencies is authorized to conduct, to make grants for, or to contract for, projects to demonstrate comprehensive approaches to the elimination or control of acid or other mine water pollution resulting from active or abandoned mining operations and other environmental pollution affecting water quality within all or part of a watershed or river basin, including siltation from surface mining. Such projects shall demonstrate the engineering and economic feasibility and practicality of various abatement techniques which will contribute substantially to effective and practical methods of acid or other mine water pollution elimination or control, and other pollution affecting water quality, including techniques that demonstrate the engineering and economic feasibility and practicality of using sewage sludge materials and other municipal wastes to diminish or prevent pollution affecting water quality from acid, sedimentation, or other pollutants and in such projects to restore affected lands to usefulness for forestry, agriculture, recreation, or other beneficial purposes.

(b) Consistency of projects with objectives of Appalachian Regional Development Act of 1965.

Prior to undertaking any demonstration project under this section in the Appalachian region (as defined in section 403 of the Appalachian Regional Development Act of 1965, as amended), the Appalachian Regional Commission shall determine that such demonstration project is consistent with the objectives of the Appalachian Regional Development Act of 1965, as amended.

(c) Watershed selection.

The Administrator, in selecting watersheds for the purposes of this section, shall be satisfied that the project area will not be affected adversely by the influx of acid or other mine water pollution from nearby sources.

(d) Conditions upon Federal participation.

Federal participation in such projects shall be subject to the conditions—

(1) that the State shall acquire any land or interests therein necessary for such project; and

(2) that the State shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

(e) Authorization of appropriations.

There is authorized to be appropriated $30,000,000 to carry out the provisions of this section, which sum shall be available until expended. (June 30, 1948, ch. 758, title I, § 107, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 828.)

§ 1258. Pollution control in the Great Lakes.

(a) Demonstration projects.

The Administrator, in cooperation with other Federal departments, agencies, and instrumentalities is authorized to enter into agreements with any State, political subdivision, interstate agency, or other public agency, or combination thereof, to carry out one or more projects to demonstrate new methods and techniques and to develop preliminary plans for the elimination or control of pollution, within all or any part of the watersheds of the Great Lakes. Such projects shall demonstrate the engineering and economic feasibility and practicality of removal of pollutants and prevention of any polluting matter from entering into the Great Lakes in the future and other reduction and remedial techniques which will contribute substantially to effective and practical methods of pollution prevention, reduction, or elimination.

(b) Conditions of Federal participation.

Federal participation in such projects shall be subject to the condition that the State, political subdivision, interstate agency, or other public agency, or combination thereof, shall pay not less than 25 per centum of the actual project costs, which payment may be in any form, including, but not limited to, land or interests therein that is needed for the project, and personal property or services the value of which shall be determined by the Administrator.

(c) Authorization of appropriations.

There is authorized to be appropriated $20,000,000 to carry out the provisions of subsections (a) and (b) of this section, which sum shall be available until expended.

(d) Lake Erie demonstration program.

(1) In recognition of the serious conditions which exist in Lake Erie, the Secretary of the Army, acting through the Chief of Engineers, is directed to design and develop a demonstration waste water management program for the rehabilitation and en-

vironmental repair of Lake Erie. Prior to the initiation of detailed engineering and design, the program, along with the specific recommendations of the Chief of Engineers, and recommendations for its financing, shall be submitted to the Congress for statutory approval. This authority is in addition to, and not in lieu of, other waste water studies aimed at eliminating pollution emanating from select sources around Lake Erie.

(2) This program is to be developed in cooperation with the Environmental Protection Agency, other interested departments, agencies, and instrumentalities of the Federal Government, and the States and their political subdivisions. This program shall set forth alternative systems for managing waste water on a regional basis and shall provide local and State governments with a range of choice as to the type of system to be used for the treatment of waste water. These alternative systems shall include both advanced waste treatment technology and land disposal systems including aerated treatment-spray irrigation technology and will also include provisions for the disposal of solid wastes, including sludge. Such program should include measures to control point sources of pollution, area sources of pollution, including acid-mine drainage, urban runoff and rural runoff, and in place sources of pollution, including bottom loads, sludge banks, and polluted harbor dredgings.

(e) Authorization of appropriations for Lake Erie demonstration program.

There is authorized to be appropriated $5,000,000 to carry out the provisions of subsection (d) of this section, which sum shall be available until expended. (June 30, 1948, ch. 758, title I, § 108, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 828.)

§ 1259. Training grants and contracts.

(a) The Administrator is authorized to make grants to or contracts with institutions of higher education, or combinations of such institutions, to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of undergraduate students to enter an occupation which involves the design, operation, and maintenance of treatment works, and other facilities whose purpose is water quality control. Such grants or contracts may include payment of all or part of the cost of programs or projects such as—

(A) planning for the development or expansion of programs or projects for training persons in the operation and maintenance of treatment works;

(B) training and retraining of faculty members;

(C) conduct of short-term or regular session institutes for study by persons engaged in, or preparing to engage in, the preparation of students preparing to enter an occupation involving the operation and maintenance of treatment works;

(D) carrying out innovative and experimental programs of cooperative education involving alternate periods of full-time or part-time academic study at the institution and periods of full-time or part-time employment involving the operation and maintenance of treatment works; and

(E) research into, and development of, methods of training students or faculty, including the preparation of teaching materials and the planning of curriculum.

(b) (1) The Administrator may pay 100 per centum of any additional cost of construction of a treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel.

(2) The Administrator shall make no more than one grant for such additional construction in any State (to serve a group of States, where, in his judgment, efficient training programs require multi-State programs), and shall make such grant after consultation with and approval by the State or States on the basis of (A) the suitability of such facility for training operation and maintenance personnel for treatment works throughout such State or States; and (B) a commitment by the State agency or agencies to carry out at such facility a program of training approved by the Administrator.

(3) The Administrator may make such grant out of the sums allocated to a State under section 1285 of this title, except that in no event shall the Federal cost of any such training facilities exceed $250,000. (June 30, 1948, ch. 758, title I, § 109, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 829.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1260, 1262 and 1375 of this title.

§ 1260. Same; applications; allocation.

(1) A grant or contract authorized by section 1259 of this title may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it—

(A) sets forth programs, activities, research, or development for which a grant is authorized under section 1259 of this title and describes the relation to any program set forth by the applicant in an application, if any, submitted pursuant to section 1261 of this title;

(B) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section; and

(C) provides for making such reports, in such form and containing such information, as the Administrator may require to carry out his functions under this section, and for keeping such records and for affording such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

(2) The Administrator shall allocate grants or contracts under section 1259 of this title in such manner as will most nearly provide an equitable distribution of the grants or contracts throughout the United States among institutions of higher education which show promise of being able to use funds effectively for the purpose of this section.

(3) (A) Payments under this section may be used in accordance with regulations of the Administrator, and subject to the terms and conditions set forth

in an application approved under paragraph (1), to pay part of the compensation of students employed in connection with the operation and maintenance of treatment works, other than as an employee in connection with the operation and maintenance of treatment works or as an employee in any branch of the Government of the United States, as part of a program for which a grant has been approved pursuant to this section.

(B) Departments and agencies of the United States are encouraged, to the extent consistent with efficient administration, to enter into arrangements with institutions of higher education for the full-time, part-time, or temporary employment, whether in the competitive or excepted service, of students enrolled in programs set forth in applications approved under paragraph (1). (June 30, 1948, ch. 758, title I, § 110, as added Oct. 18, 1972, Pub. L. 92–500, §2, 86 Stat. 830.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1261, 1262 of this title.

§ 1261. Scholarships.

(1) The Administrator is authorized to award scholarships in accordance with the provisions of this section for undergraduate study by persons who plan to enter an occupation involving the operation and maintenance of treatment works. Such scholarships shall be awarded for such periods as the Administrator may determine but not to exceed four academic years.

(2) The Administrator shall allocate scholarships under this section among institutions of higher education with programs approved under the provisions of this section for the use of individuals accepted into such programs in such manner and according to such plan as will insofar as practicable—

(A) provide an equitable distribution of such scholarships throughout the United States; and

(B) attract recent graduates of secondary schools to enter an occupation involving the operation and maintenance of treatment works.

(3) The Administrator shall approve a program of any institution of higher education for the purposes of this section only upon application by the institution and only upon his finding—

(A) that such program has a principal objective the education and training of persons in the operation and maintenance of treatment works;

(B) that such program is in effect and of high quality, or can be readily put into effect and may reasonably be expected to be of high quality;

(C) that the application describes the relation of such program to any program, activity, research, or development set forth by the applicant in an application, if any, submitted pursuant to section 1260 of this title; and

(D) that the application contains satisfactory assurances that (i) the institution will recommend to the Administrator for the award of scholarships under this section, for study in such program, only persons who have demonstrated to the satisfaction of the institution a serious intent, upon completing the program, to enter an occupation involving the operation and maintenance of treatment works, and (ii) the institution will make reasonable continuing efforts to encourage recipients of scholarships under this section, enrolled in such program, to enter occupations involving the operation and maintenance of treatment works upon completing the program.

(4)(A) The Administrator shall pay to persons awarded scholarships under this section such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable supported programs.

(B) The Administrator shall (in addition to the stipends paid to persons under paragraph (1)) pay to the institution of higher education at which such person is pursuing his course of study such amount as he may determine to be consistent with prevailing practices under comparable federally supported programs.

(5) A person awarded a scholarship under the provisions of this section shall continue to receive the payments provided in this section only during such periods as the Administrator finds that he is maintaining satisfactory proficiency and devoting full time to study or research in the field in which such scholarship was awarded in an institution of higher education, and is not engaging in gainful employment other than employment approved by the Administrator by or pursuant to regulation.

(6) The Administrator shall by regulation provide that any person awarded a scholarship under this section shall agree in writing to enter and remain in an occupation involving the design, operation, or maintenance of treatment works for such period after completion of his course of studies as the Administrator determines appropriate. (June 30, 1948, ch. 758, title I, § 111, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 831.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1260, 1262, 1375 of this title.

§ 1262. Definitions and authorizations.

(a) As used in sections 1259 through 1262 of this title—

(1) The term "institution of higher education" means an educational institution described in the first sentence of section 1141 of Title 20 (other than an institution of any agency of the United States) which is accredited by a nationally recognized accrediting agency or association approved by the Administrator for this purpose. For purposes of this subsection, the Administrator shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.

(2) The term "academic year" means an academic year or its equivalent, as determined by the Administor.

(b) The Administrator shall annually report his activities under sections 1259 through 1262 of this title, including recommendations for needed revisions in the provisions thereof.

(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, to carry out section 1259 through 1262 of this title. (June 30, 1948, ch. 758, title I, § 112, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 832, and amended Jan. 2, 1975, Pub. L. 93–592, § 4, 88 Stat. 1925.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 93–592 substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

§ 1263. Alaska village demonstration projects.

(a) The Administrator is authorized to enter into agreements with the State of Alaska to carry out one or more projects to demonstrate methods to provide for central community facilities for safe water and eliminate or control of pollution in those native villages of Alaska without such facilities. Such project shall include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities, and other similar facilities, and educational and informational facilities and programs relating to health and hygiene. Such demonstration projects shall be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of pollution for all native villages in such State.

(b) In carrying out this section the Administrator shall cooperate with the Secretary of Health, Education, and Welfare for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

(c) The Administrator shall report to Congress not later than July 1, 1973, the results of the demonstration projects authorized by this section together with his recommendations, including any necessary legislation, relating to the establishment of a statewide program.

(d) There is authorized to be appropriated not to exceed $2,000,000 to carry out this section. (June 30, 1948, ch. 758, title I, § 113, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 832.)

§ 1264. Lake Tahoe study.

(a) The Administrator, in consultation with the Tahoe Regional Planning Agency, the Secretary of Agriculture, other Federal agencies, representatives of State and local governments, and members of the public, shall conduct a thorough and complete study on the adequacy of and need for extending Federal oversight and control in order to preserve the fragile ecology of Lake Tahoe.

(b) Such study shall include an examination of the interrelationships and responsibilities of the various agencies of the Federal Government and State and local governments with a view to establishing the necessity for redefinition of legal and other arrangements between these various governments, and making specific legislative recommendations to Congress. Such study shall consider the effect of various actions in terms of their environmental impact on the Tahoe Basin, treated as an ecosystem.

(c) The Administrator shall report on such study to Congress not later than one year after October 18, 1972.

(d) There is authorized to be appropriated to carry out this section not to exceed $500,000. (June 30, 1948, ch. 758, title I, § 114, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 833.)

§ 1265. In-place toxic pollutants.

The Administrator is directed to identify the location of in-place pollutants with emphasis on toxic pollutants in harbors and navigable waterways and is authorized, acting through the Secretary of the Army, to make contracts for the removal and appropriate disposal of such materials from critical port and harbor areas. There is authorized to be appropriated $15,000,000 to carry out the provisions of this section, which sum shall be available until expended. (June 30, 1948, ch. 758, title I, § 115, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 833.)

SUBCHAPTER II.—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

§ 1281. Congressional declaration of purposes.

(a) It is the purpose of this subchapter to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this chapter.

(b) Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.

(c) To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

(d) The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for—

(1) the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products, or any combination thereof;

(2) the confined and contained disposal of pollutants not recycled;

(3) the reclamation of wastewater; and

(4) the ultimate disposal of sludge in a manner that will not result in environmental hazards.

(e) The Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of, or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and

such revenues shall be used by the designated regional management agency to aid in financing other environmental improvement programs.

(f) The Administrator shall encourage waste treatment management which combines "open space" and recreational considerations with such management.

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works.

(2) The Administrator shall not make grants from funds authorized for any fiscal year beginning after June 30, 1974, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that—

(A) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this subchapter; and

(B) as appropriate, the works proposed for grant assistance will take into account and allow to the extent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

(3) The Administrator shall not approve any grant after July 1, 1973, for treatment works under this section unless the applicant shows to the satisfaction of the Administrator that each sewer collection system discharging into such treatment works is not subject to excessive infiltration.

(4) The Administrator is authorized to make grants to applicants for treatment works grants under this section for such sewer system evaluation studies as may be necessary to carry out the requirements of paragraph (3) of this subsection. Such grants shall be made in accordance with rules and regulations promulgated by the Administrator. Initial rules and regulations shall be promulgated under this paragraph not later than 120 days after October 18, 1972. (June 30, 1948, ch. 758, title II, § 201, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 833.)

§ 1282. Federal share.

(a) The amount of any grant for treatment works made under this chapter from funds authorized for any fiscal year beginning after June 30, 1971, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator). Any grant (other than for reimbursement) made prior to October 18, 1972, from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section.

(b) The amount of the grant for any project approved by the Administrator after January 1, 1971, and before July 1, 1971, for the construction of treatment works, the actual erection, building or acquisition of which was not commenced prior to July 1, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under subsection (a) of this section for grants for treatment works from funds for fiscal years beginning after June 30, 1971, with respect to the cost of such actual erection, building, or acquisition. Such increased amount shall be paid from any funds allocated to the State in which the treatment works is located without regard to the fiscal year for which such funds were authorized. Such increased amount shall be paid for such project only if—

(1) a sewage collection system that is a part of the same total waste treatment system as the treatment works for which such grant was approved is under construction or is to be constructed for use in conjunction with such treatment works, and if the cost of such sewage collection system exceeds the cost of such treatment works, and

(2) the State water pollution control agency or other appropriate State authority certifies that the quantity of available ground water will be insufficient, inadequate, or unsuitable for public use, including the ecological preservation and recreational use of surface water bodies, unless effluents from publicly-owned treatment works after adequate treatment are returned to the ground water consistent with acceptable technological standards.

(June 30, 1948, ch. 758, title II, § 202, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 834.)

§ 1283. Plans, specifications, estimates, and payments.

(a) Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposed project for the construction of treatment works for which a grant is applied for under section 1281(g)(1) of this title from funds allotted to the State under section 1285 of this title and which otherwise meets the requirements of this chapter. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project.

(b) The Administrator shall, from time to time as the work progresses, make payments to the recipient of a grant for costs of construction incurred on a project. These payments shall at no time exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

(c) After completion of a project and approval of the final voucher by the Administrator, he shall pay out of the appropriate sums the unpaid balance of the Federal share payable on account of such project.

(d) Nothing in this chapter shall be construed to require, or to authorize the Administrator to require, that grants under this chapter for construction of treatment works be made only for projects which are

operable units usable for sewage collection, transportation, storage, waste treatment, or for similar purposes without additional construction. (June 30, 1948, ch. 758, title II, § 203, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 835, and amended Jan. 2, 1974, Pub. L. 93–243, § 2, 87 Stat. 1069.)

§ 1284. Limitations and conditions.

(a) Before approving grants for any project for any treatment works under section 1281(g)(1) of this title the Administrator shall determine—

(1) that such works are included in any applicable areawide waste treatment management plan developed under section 1288 of this title;

(2) that such works are in conformity with any applicable State plan under section 1313(e) of this title;

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 1313(e) of this title;

(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capacity will be required;

(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal".

(b)(1) Notwithstanding any other provision of this subchapter, the Administrator shall not approve any grant for any treatment works under section 1281(g)(1) of this title after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; (B) has made provision for the payment to such applicant by the industrial users of the treatment works, of that portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction; and (C) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator.

(2) The Administrator shall, within one hundred and eighty days after October 18, 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

(3) The grantee shall retain an amount of the revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable to the Federal share of eligible project costs provided pursuant to this subchapter as determined by the Administrator, equal to (A) the amount of the non-Federal cost of such project paid by the grantee plus (B) the amount, determined in accordance with regulations promulgated by the Administrator, necessary for future expansion and reconstruction of the project, except that such retained amount shall not exceed 50 per centum of such revenues from such project. All revenues from such project not retained by the grantee shall be deposited by the Administrator in the Treasury as miscellaneous receipts. That portion of the revenues retained by the grantee attributable to clause (B) of the first sentence of this paragraph, together with any interest thereon shall be used solely for the purposes of future expansion and reconstruction of the project.

(4) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress. (June 30, 1948, ch. 758, title II, § 204, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 835.)

§ 1285. Allotment of grant funds.

(a) Sums authorized to be appropriated pursuant to section 1287 of this title for each fiscal year beginning after June 30, 1972, shall be allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment for fiscal year 1973 shall be made not later than 30 days after October 18, 1972. Such sums shall be

allotted among the States by the Administrator in accordance with regulations promulgated by him, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States. For the fiscal years ending June 30, 1973, and June 30, 1974, such ratio shall be determined on the basis of table III of House Public Works Committee Print No. 92–50. For the fiscal year ending June 30, 1975, such ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93–28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print. Allotments for fiscal years which begin after the fiscal year ending June 30, 1975, shall be made only in accordance with a revised cost estimate made and submitted to Congress in accordance with section 1375(b) of this title and only after such revised cost estimate shall have been approved by law specifically enacted after October 18, 1972.

(b)(1) Any sums allotted to a State under subsection (a) of this section shall be available for obligation under section 1283 of this title on and after the date of such allotment. Such sums shall continue available for obligation in such State for a period of one year after the close of the fiscal year for which such sums are authorized. Any amounts so allotted which are not obligated by the end of such one-year period shall be immediately reallotted by the Administrator, in accordance with regulations promulgated by him, generally on the basis of the ratio used in making the last allotment of sums under this section. Such reallotted sums shall be added to the last allotments made to the States. Any sum made available to a State by reallotment under this subsection shall be in addition to any funds otherwise allotted to such State for grants under this subchapter during any fiscal year.

(2) Any sums which have been obligated under section 1283 of this title and which are released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. (June 30, 1948, ch. 758, title II, § 205, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 837, and amended Jan. 2, 1974, Pub. L. 93–243, § 1, 87 Stat. 1069.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–243 added provisions that for the fiscal year ending June 30, 1975, the ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93–28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print and substituted "June 30, 1975" for "June 30, 1974" in the sentence beginning "Allotments for fiscal years".

§ 1286. Reimbursement and advanced construction.

(a) Publicly owned treatment works construction initiated after June 30, 1966, but before July 1, 1972; reimbursement formula.

Any publicly owned treatment works in a State on which construction was initiated after June 30, 1966, but before July 1, 1972, which was approved by the appropriate State water pollution control agency and which the Administrator finds meets the requirements of section 8 of this Act in effect at the time of the initiation of construction shall be reimbursed a total amount equal to the difference between the amount of Federal financial assistance, if any, received under such section 8 for such project and 50 per centum of the cost of such project, or 55 per centum of the project cost where the Administrator also determines that such treatment works was constructed in conformity with a comprehensive metropolitan treatment plan as described in section 8(f) of the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Nothing in this subsection shall result in any such works receiving Federal grants from all sources in excess of 80 per centum of the cost of such project.

(b) Publicly owned treatment works construction initiated between June 30, 1956, and June 30, 1966; reimbursement formula.

Any publicly owned treatment works constructed with or eligible for Federal financial assistance under this Act in a State between June 30, 1956, and June 30, 1966, which was approved by the State water pollution control agency and which the Administrator finds meets the requirements of section 8 of this Act prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 but which was constructed without assistance under such section 8 or which received such assistance in an amount less than 30 per centum of the cost of such project shall qualify for payments and reimbursement of State or local funds used for such project from sums allocated to such State under this section in an amount which shall not exceed the difference between the amount of such assistance, if any, received for such project and 30 per centum of the cost of such project.

(c) Application for reimbursement.

No publicly owned treatment works shall receive any payment or reimbursement under subsection (a) or (b) of this section unless an application for such assistance is filed with the Administrator within the one year period which begins on October 18, 1972. Any application filed within such one year period may be revised from time to time, as may be necessary.

(d) Allocation of funds.

The Administrator shall allocate to each qualified project under subsection (a) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the reimbursement due such project as the total of such funds for such year bears to the total unpaid balance

of reimbursement due all such approved projects on the date of enactment of such appropriation. The Administrator shall allocate to each qualified project under subsection (b) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the reimbursement due such project as the total of such funds for such year bears to the total unpaid balance of reimbursement due all such approved projects on the date of enactment of such appropriation.

(e) Authorization of appropriations.

There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,600,000,000 and, to carry out subsection (b) of this section, not to exceed $750,000,000. The authorizations contained in this subsection shall be the sole source of funds for reimbursements authorized by this section.

(f) Additional funds.

(1) In any case where all funds allotted to a State under this subchapter have been obligated under section 1283 of this title, and there is construction of any treatment works project without the aid of Federal funds and in accordance with all procedures and all requirements applicable to treatment works projects, except those procedures and requirements which limit construction of projects to those constructed with the aid of previously allotted Federal funds, the Administrator, upon his approval of an application made under this subsection therefor, is authorized to pay the Federal share of the cost of construction of such project when additional funds are allotted to the State under this subchapter if prior to the construction of the project the Administrator approves plans, specifications, and estimates therefor in the same manner as other treatment works projects. The Administrator may not approve an application under this subsection unless an authorization is in effect for the future fiscal year for which the application requests payment, which authorization will insure such payment without exceeding the State's expected allotment from such authorization.

(2) In determining the allotment for any fiscal year under this subchapter, any treatment works project constructed in accordance with this section and without the aid of Federal funds shall not be considered completed until an application under the provisions of this subsection with respect to such project has been approved by the Administrator, or the availability of funds from which this project is eligible for reimbursement has expired, whichever first occurs. (June 30, 1948, ch. 758, title II, § 206, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 836, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(2), 87 Stat. 906.)

AMENDMENTS

1973—Subsec. (e). Pub. L. 93–207 substituted "$2,600,000,000" for "$2,000,000,000".

APPLICATION FOR ASSISTANCE

Section 2 of Pub. L. 93–207 provided that: "Notwithstanding the requirements of subsection (c) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838) [this section], applications for assistance under section 206 [this section], may be filed with the Administrator of the Environmental Protection Agency until January 31, 1974."

ALLOCATION OF CONSTRUCTION GRANTS APPROPRIATED FOR THE YEAR ENDING JUNE 30, 1973; INTERIM PAYMENTS; LIMITATIONS.

Section 3 of Pub. L. 93–207 provided that: "Funds available for reimbursement under Public Law 92–399 [making appropriations for Agriculture-Environmental and Consumer Protection Programs for the fiscal year ending June 30, 1973] shall be allocated in accordance with subsection (d) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838) [subsec. (d) of this section], pro rata among all projects eligible under subsection (a) of such section 206 [subsec. (a) of this section] for which applications have been submitted and approved by the Administrator pursuant to such Act [this chapter]. Notwithstanding the provisions of subsection (d) of such section 206, (1) the Administrator is authorized to make interim payments to each such project for which an application has been approved on the basis of estimates of maximum pro rata entitlement of all applicants under section 206(a) and (2) for the purpose of determining allocation of sums available under Public Law 92–399, the unpaid balance of reimbursement due such projects shall be computed as of January 31, 1974. Upon completion by the Administrator of his audit and approval of all projects for which an application has been filed under subsection (a) of such section 206, the Administrator shall, within the limits of appropriated funds, allocate to each such qualified project the amount remaining, if any, of its total entitlement. Amounts allocated to projects which are later determined to be in excess of entitlement shall be available for reallocation, until expended, to other qualified projects under subsection (a) of such section 206. In no event, however, shall any payments exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project."

§ 1287. Authorization of appropriations.

There is authorized to be appropriated to carry out this subchapter, other than sections 1286(e), 1288 and 1289 of this title, for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000. (June 30, 1948, ch. 758, title II, § 207, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 839, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(3), 87 Stat. 906.)

AMENDMENTS

1973—Pub. L. 93–207 added reference to section 1286(e) of this title.

§ 1288. Areawide waste treatment management.

(a) Identification and designation of areas having substantial water quality control problems.

For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

(1) The Administrator, within ninety days after October 18, 1972, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2) The Governor of each State, within sixty

days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5) Existing regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7) Designations under this subsection shall be subject to the approval of the Administrator.

(b) Planning process.

(1) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 1281 of this title. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

(2) Any plan prepared under such process shall include, but not be limited to—

(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulatory program to—

(i) implement the waste treatment management requirements of section 1281(c) of this title,

(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction ac-

tivity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

(4) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 1313 of this title so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for application to all regions within such State.

(c) Regional operating agencies.

(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority—

(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

(E) to raise revenues, including the assessment of waste treatment charges;

(F) to incur short- and long-term indebtedness;

(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

(I) to accept for treatment industrial wastes.

(d) Conformity of works with area plan.

After a waste treatment management agency having the authority required by subsection (c) of this section has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 1281(g)(1) of this title within such area except to such designated agency and for works in conformity with such plan.

(e) Permits not to conflict with approved plans.

No permit under section 1342 of this title shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

(f) Grants.

(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year.

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal. There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 for the fiscal year ending June 30, 1973, not to exceed $100,000,000 for the fiscal year ending June 30, 1974, and not to exceed $150,000,000 for the fiscal year ending June 30, 1975.

(g) Technical assistance by Administrator.

The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency desig-

nated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

(h) Technical assistance by Secretary of the Army.

(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed[1] under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed $50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974. (June 30, 1948, ch. 758, title II, § 208, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 839.)

§ 1289. Basin planning.

(a) The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources Planning Act for all basins in the United States. All such plans shall be completed not later than January 1, 1980, except that priority in the preparation of such plans shall be given to those basins and portions thereof which are within those areas designated under paragraphs (2), (3), and (4) of subsection (a) of section 1288 of this title.

(b) The President, acting through the Water Resources Council, shall report annually to Congress on progress being made in carrying out this section. The first such report shall be submitted not later than January 31, 1973.

(c) There is authorized to be appropriated to carry out this section not to exceed $200,000,000. (June 30, 1948, ch. 758, title II, § 209, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 843.)

§ 1290. Annual survey.

The Administrator shall annually make a survey to determine the efficiency of the operation and maintenance of treatment works constructed with grants made under this chapter, as compared to the efficiency planned at the time the grant was made. The results of such annual survey shall be included in the report required under section 1375(a) of this title. (June 30, 1948, ch. 758, title II, § 210, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 843.)

§ 1291. Sewage collection systems.

No grant shall be made for a sewage collection system under this subchapter unless such grant (1) is for replacement or major rehabilitation of an existing collection system and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (2) is for a new collection system in an existing community with sufficient existing or planned capacity adequately to treat such collected sewage and is consistent with section 1281 of this title. (June 30, 1948, ch. 758, title II, § 211, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 843.)

[1] So in original probably should be "designated".

§ 1292. Definitions.

As used in this subchapter—

(1) The term "construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(2)(A) The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.

(C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after October 18, 1972, publish and thereafter revise no less often than annually, guidelines for the evaluation of methods, including cost-effective analysis, described in subparagraph (B) of this paragraph.

(3) The term "replacement" as used in this subchapter means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed. (June 30, 1948, ch. 758, title II, § 212, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 844.)

SUBCHAPTER III.—STANDARDS AND ENFORCEMENT

§ 1311. Effluent limitations.

(a) Illegality of pollutant discharges except in compliance with law.

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives.

In order to carry out the objective of this chapter there shall be achieved—

(1) (A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2) (A) not later than July 1, 1983, effluent limitations for categories and classes of point sources, other than publicly owned treament works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title; and

(B) not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements set forth in section 1281(g)(2)(A) of this title.

(c) Modification of timetable.

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations.

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations.

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents or high-level radioactive waste.

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters. (June 30, 1948, ch. 758, title III, § 301, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 844.)

§ 1312. Water quality related effluent limitations.

(a) Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this chapter) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

(2) If a person affected by such limitation demon-

strates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title. (June 30, 1948, ch. 758, title III, § 302, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 846.)

§ 1313. Water quality standards and implementation plans.

(a) Existing water quality standards.

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is a waiting approval by, the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations.

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication.

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load.

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.

(e) Continuing planning process.

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this

chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance.

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards.

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards.

For the purposes of this chapter the term "water quality standards" includes thermal water quality standards. (June 30, 1948, ch. 758, title III, § 303, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 846.)

§ 1314. Information and guidelines.

(a) Criteria development and publication.

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(b) Effluent limitation guidelines.

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy

requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate; and

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants.

(c) Pollution discharge elimination procedures.

The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after October 18, 1972 (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 1316 of this title. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d) Secondary treatment information; alternative waste treatment management techniques and systems.

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after October 18, 1972 (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 1281 of this title.

(e) Identification and evaluation of nonpoint sources of pollution; processes, procedures, and methods to control pollution.

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 1288 of this title, within one year after October 18, 1972 (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(f) Guidelines for pretreatment of pollutants.

(1) For the purpose of assisting States in carrying out programs under section 1342 of this title, the Administrator shall publish, within one hundred and twenty days after October 18, 1972, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(g) Test procedures guidelines.

The Administrator shall, within one hundred and eighty days from October 18, 1972, promulgate guidelines establishing test procedures for the analysis of

pollutants that shall include the factors which must be provided in any certification pursuant to section 1341 of this title or permit application pursuant to section 1342 of this title.

(h) Guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower.

The Administrator shall (1) within sixty days after October 18, 1972, promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 1342 of this title, and (2) within sixty days from October 18, 1972, promulgate guidelines establishing the minimum procedural and other elements of any State program under section 1342 of this title, which shall include:

(A) monitoring requirements:

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(i) Restoration and enhancement of publicly owned fresh water lakes.

The Administrator shall, within 270 days after October 18, 1972 (and from time to time thereafter), issue such information on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned fresh water lakes.

(j) Agreements with Secretaries of Agriculture, Army, and Interior to provide maximum utilization of programs to achieve and maintain water quality; transfer of funds; authorization of appropriations.

(1) The Administrator shall, within six months from October 18, 1972, enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior to provide for the maximum utilization of the appropriate programs authorized under other Federal law to be carried out by such Secretaries for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 1288 of this title.

(2) The Administrator, pursuant to any agreement under paragraph (1) of this subsection is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, or the Secretary of the Interior any funds appropriated under paragraph (3) of this subsection to supplement any funds otherwise appropriated to carry out appropriate programs authorized to be carried out by such Secretaries.

(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974. (June 30, 1948, ch. 758, title III, § 304, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 850.)

§ 1315. Water quality inventory; State reports; transmittal to Congress.

(a) The Administrator, in cooperation with the States and with the assistance of appropriate Federal agencies, shall prepare a report to be submitted to the Congress on or before January 1, 1974, which shall—

(1) describe the specific quality, during 1973, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, of all navigable waters and the waters of the contiguous zone;

(2) include an inventory of all point sources of discharge (based on a qualitative and quantitative analysis of discharges) of pollutants, into all navigable waters and the waters of the contiguous zone; and

(3) identify specifically those navigable waters, the quality of which—

(A) is adequate to provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allow recreational activities in and on the water;

(B) can reasonably be expected to attain such level by 1977 or 1983; and

(C) can reasonably be expected to attain such level by any later date.

(b)(1) Each State shall prepare and submit to the Administrator by January 1, 1975, and shall bring up to date each year thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this chapter (as identified by the Administrator pursuant to criteria published under section 1314(a) of this title) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this chapter, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this chapter in such State, (iii) the economic and social benefits of

such achievement, and (iv) an estimate of the date of such achievement; and

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and annually thereafter. (June 30, 1948, ch. 758, title III, § 305, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 853.)

§ 1316. National standards of performance.

(a) Definitions.

For purposes of this section:

(1) The term "standard of performance" means a standard for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term "source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

(5) The term "construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(b) Categories of sources; Federal standards of performance for new sources.

(1)(A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

pulp and paper mills;
paperboard, builders paper and board mills;
meat product and rendering processing;
dairy product processing;
grain mills;
canned and preserved fruits and vegetables processing;
canned and preserved seafood processing;
sugar processing;
textile mills;
cement manufacturing;
feedlots;
electroplating;
organic chemicals manufacturing;
inorganic chemicals manufacturing;
plastic and synthetic materials manufacturing;
soap and detergent manufacturing;
fertilizer manufacturing;
petroleum refining;
iron and steel manufacturing;
nonferrous metals manufacturing;
phosphate manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;
glass and asbestos manufacturing;
rubber processing; and
timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

(3) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) State enforcement of standards of performance.

Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

(d) Protection from more stringent standards.

Notwithstanding any other provision of this chapter, any point source the construction of which is commenced after October 18, 1972, and which is so constructed as to meet all applicable standards of performance shall not be subject to any more

stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of Title 26 whichever period ends first.

(e) Illegality of operation of new sources in violation of applicable standards of performance.

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source. (June 30, 1948, ch. 758, title III, § 306, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 854.)

§ 1317. Toxic and pretreatment effluent standards; establishment; revision; illegality of source operation in violation of standards.

(a)(1) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section. The Administrator in publishing such list shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms.

(2) Within one hundred and eighty days after the date of publication of any list, or revision thereof, containing toxic pollutants or combination of pollutants under paragraph (1) of this subsection, the Administrator, in accordance with section 553 of Title 5, shall publish a proposed effluent standard (or a prohibition) for such pollutant or combination of pollutants, which shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and he shall publish a notice for a public hearing on such proposed standard to be held within thirty days. As soon as possible after such hearing, but not later than six months after publication of the proposed effluent standard (or prohibition), unless the Administrator finds, on the record, that a modification of such proposed standard (or prohibition) is justified based upon a preponderance of evidence adduced at such hearings, such standard (or prohibition) shall be promulgated.

(3) If after a public hearing the Administrator finds that a modification of such proposed standard (or prohibition) is justified, a revised effluent standard (or prohibition) for such pollutant or combination of pollutants shall be promulgated immediately. Such standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case more than one year from the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b)(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of

any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard. (June 30, 1948, ch. 758, title III, § 307, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 856.)

§ 1318. Inspections, monitoring, and entry.

(a) Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, and 1364 of this title—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(e) Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States). (June 30, 1948, ch. 758, title III, § 308, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 858.)

§ 1319. Enforcement.

(a) State enforcement; compliance orders.

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, or 1318 of this title in a permit issued by a State under an approved permit program under section 1342 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), the Administrator shall enforce any permit condition or limitation with respect to any person—

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, or 1318 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this

title by him or by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(b) Civil actions.

The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(c) Criminal penalties.

(1) Any person who willfully or negligently violates section 1311, 1312, 1316, 1317, or 1318 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(d) Civil penalties.

Any person who violates section 1311, 1312, 1316, 1317, or 1318 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(e) State liability for judgments and expenses.

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment. (June 30, 1948, ch. 758, title III, § 309, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 859.)

§ 1320. International pollution abatement.

(a) Hearing; participation by foreign nations.

Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

(b) Functions and responsibilities of Administrator not affected.

The calling of a hearing under this section shall not be construed by the courts, the Administrator,

or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this chapter.

(c) Hearing board; composition; findings of fact; recommendations; implementation of board's decision

The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board's decision in accordance with the provisions of this chapter.

(d) Report by alleged polluter.

In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such a report. Such report shall be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of Title 18. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

(e) Compensation of board members.

Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of Title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of Title 5, be fully reimbursed for travel, subsistence, and related expenses.

(f) Enforcement proceedings.

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct. (June 30, 1948, ch. 758, title III, § 310, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 860.)

§ 1321. Oil and hazardous substance liability.

(a) Definitions.

For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, cor-

poration, association, and a partnership.

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous susbtances; determination of removability; liability; penalties.

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone, present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B)(i) The Administrator shall include in any designation under subparagraph (A) of this subsection a determination whether any such designated hazardous substance can actually be removed.

(ii) The owner or operator of any vessel, onshore facility, or offshore facility from which there is discharged during the two-year period beginning on October 18, 1972, any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided under subsection (f) of this section, as appropriate, to the United States for a civil penalty per discharge established by the Administrator based on toxicity, degradability, and dispersal characteristics of such substance, in an amount not to exceed $50,000, except that where the United States can show that such discharge was a result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States for a civil penalty in such amount as the Administrator shall establish, based upon the toxicity, degradability, and dispersal characteristics of such substance.

(iii) After the expiration of the two-year period referred to in clause (ii) of this subparagraph, the owner or operator of any vessel, onshore facility, or offshore facility, from which there is discharged any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided in subsection (f) of this section, to the United States for either one or the other of the following penalties, the determination of which shall be in the discretion of the Administrator:

(aa) a penalty in such amount as the Administrator shall establish, based on the toxicity, degradability, and dispersal characteristics of the substance, but not less than $500 nor more than $5,000; or

(bb) a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than $5,000,000 in the case of a discharge from a vessel and $500,000 in the case of a discharge from an onshore or offshore facility.

(iv) The Administrator shall establish by regulation, for each hazardous substance designated under subparagraph (A) of this paragraph, and within 180 days of the date of such designation, a unit of measurement based upon the usual trade practice and, for the purpose of determining the penalty under clause (iii)(bb) of this subparagraph, shall establish for each such unit a fixed monetary amount which shall be not less than $100 nor more than $1,000 per unit. He shall establish such fixed amount based on the toxicity, degradability, and dispersal characteristics of the substance.

(3) The discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in harmful quantities as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone, where permitted under article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation, to be issued as soon as possible after October 18, 1972, determine for the purposes of this section, those quantities of oil and any hazardous substance the discharge of which, at such times, locations, circumstances, and

conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) Any owner or operator of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46 of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(c) Removal of discharged oil or hazardous substances; National Contingency Plan.

(1) Whenever any oil or a hazardous substance is discharged, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after October 18, 1972, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances to the appropriate Federal agency;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Maritime disaster discharges.

Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil or hazardous substance.

(e) Judicial relief.

In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f) Liability for actual costs of removal.

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $100 per gross ton of such vessel or $14,000,000 whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(g) Third party liability.

In any case where an owner or operator of a vessel,

of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred in such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) Rights against third parties who caused or contributed to discharge.

The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) Recovery of removal costs.

(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k) of this section.

(j) Regulations; penalty.

(1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

(k) Authorization of appropriations.

There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (*l*) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

(*l*) Administration.

The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Boarding and inspection of vessels; arrest; execution of warrants or other process.

Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) Jurisdiction.

The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1) of this section, arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o) Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected.

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) Financial responsibility.

(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after October 18, 1972, with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after October 18, 1972. Regulations necessary to implement this subsection shall be issued within six months after October 18, 1972.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 91 of Title 46 to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evi-

dence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with. (June 30, 1948, ch. 758, title III, § 311, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 862.)

§ 1322. Marine sanitation devices.

(a) Definitions.

For the purpose of this section, the term—

(1) "new vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) "existing vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) "marine sanitation device" includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes;

(7) "manufacturer" means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices or of vessels subject to standards and regulations promulgated under this section;

(8) "person" means an individual, partnership, firm, corporation, or association, but does not include an individual on board a public vessel;

(9) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(b) Federal standards of performance.

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1254(j) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as "standards") which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

(c) Initial standards; effective dates; revision; waiver.

(1) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

(d) Vessels owned and operated by the United States.

The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

(e) Pre-promulgation consultation.

Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health, Education, and Welfare; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the

requirements of section 553 of Title 5.

(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage.

(1) After the effective date of the initial standards and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(2) If, after promulgation of the initial standards and regulations and prior to their effective date, a vessel is equipped with a marine sanitation device in compliance with such standards and regulations and the installation and operation of such device is in accordance with such standards and regulations, such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such vessel on the date of such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

(4) If the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.

(g) Sales limited to certified devices; certification of test device; recordkeeping; reports.

(1) No manufacturer of a marine sanitation device shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine sanitation device manufactured after the effective date of the standards and regulations promulgated under this section unless such device is in all material respects substantially the same as a test device certified under this subsection.

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of Title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

(h) Sale and resale of properly equipped vessels; operability of certified marine sanitation devices.

After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(1) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

(2) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any certified marine sanitation device or element of design of such device installed in such vessel;

(3) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

(4) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped

with an operable marine sanitation device certified pursuant to this section.

(i) Jurisdiction to restrain violations; contempts.

The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(j) Penalties.

Any person who violates subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable to a civil penalty of not more than $5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than $2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

(k) Enforcement authority.

The provisions of this section shall be enforced by the Secretary of the department in which the Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section.

(*l*) Boarding and inspection of vessels; execution of warrants and other process.

Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to public vessels, (1) board and inspect any vessel upon the navigable waters of the United States and (2) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(m) Enforcement in United States possessions.

In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone. (June 30, 1948, ch. 758, title III, § 312, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 871.)

§ 1323. Federal facilities pollution control.

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with Federal, State, interstate, and local requirements respecting control and abatement of pollution to the same extent that any person is subject to such requirements, including the payment of reasonable service charges. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. (June 30, 1948, ch. 758, title III, § 313, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 875.)

§ 1324. Clean lakes.

(a) Each State shall prepare or establish, and submit to the Administrator for his approval—

(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

(b) The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under this section.

(c)(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; and $150,000,000

for the fiscal year 1975 for grants to States under this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section. (June 30, 1948, ch. 758, title III, § 314, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 875.)

§ 1325. National Study Commission.

(a) Establishment.

There is established a National Study Commission, which shall make a full and complete investigation and study of all of the technological aspects of achieving, and all aspects of the total economic, social, and environmental effects of achieving or not achieving, the effluent limitations and goals set forth for 1983 in section 1311(b)(2) of this title.

(b) Membership; chairman.

Such Commission shall be composed of fifteen members, including five members of the Senate, who are members of the Public Works committee, appointed by the President of the Senate, five members of the House, who are members of the Public Works committee, appointed by the Speaker of the House, and five members of the public appointed by the President. The Chairman of such Commission shall be elected from among its members.

(c) Contract authority.

In the conduct of such study, the Commission is authorized to contract with the National Academy of Sciences and the National Academy of Engineering (acting through the National Research Council), the National Institute of Ecology, Brookings Institution, and other nongovernmental entities, for the investigation of matters within their competence.

(d) Cooperation of departments, agencies, and instrumentalities of executive branch.

The heads of the departments, agencies and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

(e) Report to Congress.

A report shall be submitted to the Congress of the results of such investigation and study, together with recommendations, not later than three years after October 18, 1972.

(f) Compensation and allowances.

The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS–18, as provided in the General Schedule under section 5332 of Title 5, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

(g) Appointment of personnel.

In addition to authority to appoint personnel subject to the provisions of Title 5 governing appointments in the competitive service, and to pay such personnel in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commission shall have authority to enter into contracts with private or public organizations who shall furnish the Commission with such administrative and technical personnel as may be necessary to carry out the purpose of this section. Personnel furnished by such organizations under this subsection are not, and shall not be considered to be, Federal employees for any purposes, but in the performance of their duties shall be guided by the standards which apply to employees of the legislative branches under rules 41 and 43 of the Senate and House of Representatives, respectively.

(h) Authorization of appropriation.

There is authorized to be appropriated, for use in carrying out this section, not to exceed $17,250,000. (June 30, 1948, ch. 758, title III, § 315, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 875, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(5), 87 Stat. 906; Jan. 2, 1975, Pub. L. 93–592, § 5, 88 Stat. 1925; Pub. L. 94–238; Mar. 23, 1976, 90 Stat. 250.)

AMENDMENTS

1976— Subsec. (h). Pub. L. 94–238 substituted "$17,250,000" for "$17,000,000".

1975—Subsec. (h). Pub. L. 93–592 substituted "$17,000,000" for "$15,000,000".

1973—Subsec. (g). Pub. L. 93–207 added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 93–207 redesignated former subsec. (g) as (h).

§ 1326. Thermal discharges.

(a) Effluent limitations that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife.

With respect to any point source otherwise subject to the provisions of section 1311 of this title or section 1316 of this title, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

(b) Cooling water intake structures.

Any standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location,

design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972.

Notwithstanding any other provision of this chapter, any point source of a discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which, as modified, meets effluent limitations established under section 1311 of this title or, if more stringent, effluent limitations established under section 1313 of this title and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of Title 26, whichever period ends first. (June 30, 1948, ch. 758, title III, § 316, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 876.)

§ 1327. Investigation and study of feasibility of alternate methods of financing the cost of preventing, controlling, and abating pollution.

(a) The Administrator shall continue to investigate and study the feasibility of alternate methods of financing the cost of preventing, controlling and abating pollution as directed in the Water Quality Improvement Act of 1970, including, but not limited to, the feasibility of establishing a pollution abatement trust fund. The results of such investigation and study shall be reported to the Congress not later than two years after enactment of this title, together with recommendations of the Administrator for financing the programs for preventing, controlling and abating pollution for the fiscal years beginning after fiscal year 1976, including any necessary legislation.

(b) There is authorized to be appropriated for use in carrying out this section, not to exceed $1,000,000. (June 30, 1948, ch. 758, title III, § 317, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 877.)

§ 1328. Aquaculture.

(a) The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision.

(b) The Administrator shall by regulation, not later than January 1, 1974, establish any procedures and guidelines he deems necessary to carry out this section. (June 30, 1948, ch. 758, title III, § 318, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 877.)

SUBCHAPTER IV.—PERMITS AND LICENSES

§ 1341. Certification.

(a) Compliance with applicable requirements; application; procedures; license suspension.

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371 (c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary

to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1316, or 1317 of this title.

(6) No Federal agency shall be deemed to be an applicant for the purposes of this subsection.

(7) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements.

Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees.

In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Limitations and monitoring requirements of certification.

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section. (June 30, 1948, ch. 758, title IV, § 401, as added Oct. 18, 1972, Pub. L 92–500, § 2, 86 Stat. 877.)

§ 1342. National pollutant discharge elimination system.

(a) Permits for discharge of pollutants.

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(h)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out of the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs.

At any time after the promulgation of the guidelines required by subsection (h)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administration a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of federal program upon submission of State program; withdrawal of approval of State program.

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(h)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(h)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(d) Notification of Administrator.

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(e) Waiver of notification requirement.

In accordance with guidelines promulgated pursuant to subsection (h)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories.

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants.

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works.

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited.

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information.

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits.

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of

sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period. (June 30, 1948, ch. 758, title IV, § 402, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 880.)

§ 1343. Ocean discharge criteria.

(a) No permit under section 1342 of this title for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 1342 of this title if the Administrator determines it to be in the public interest.

(b) The requirements of subsection (d) of section 1342 of this title may not be waived in the case of permits for discharges into the territorial sea.

(c)(1) The Administrator shall, within one hundred and eighty days after October 18, 1972 (and from time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans, which shall include:

(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

(D) the persistence and permanence of the effects of disposal of pollutants;

(E) the effect of the disposal of varying rates, of particular volumes and concentrations of pollutants;

(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 1342 of this title. (June 30, 1948, ch. 758, title IV, § 403, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 883.)

§ 1344. Permits for dredged or fill material.

(a) The Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary of the Army, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary of the Army. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection. (June 30, 1948, ch. 758, title IV, § 404, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 884.)

§ 1345. Disposal of sewage sludge.

(a) Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 1292 of this title (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under this section.

(b) The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to this section. Such regulations shall require the application to such disposal

of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objective of this chapter.

(c) Each State desiring to administer its own permit program for disposal of sewage sludge within its jurisdiction may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter. (June 30, 1948, ch. 758, title IV, § 405, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 884.)

SUBCHAPTER V.—GENERAL PROVISIONS

§ 1361. Administration.

(a) Authority of Administrator to prescribe regulations.

The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.

(b) Utilization of other agency officers and employees.

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this chapter.

(c) Recordkeeping.

Each recipient of financial assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate effective audit.

(d) Audit.

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) Awards for outstanding technological achievement or innovative processes, methods, or devices in waste treatment and pollution abatement programs.

(1) It is the purpose of this subsection to authorize a program which will provide official recognition by the United States Government to those industrial organizations and political subdivisions of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. The Administrator shall, in consultation with the appropriate State water pollution control agencies, establish regulations under which such recognition may be applied for and granted, except that no applicant shall be eligible for an award under this subsection if such applicant is not in total compliance with all applicable water quality requirements under this chapter, or otherwise does not have a satisfactory record with respect to environmental quality.

(2) The Administrator shall award a certificate or plaque of suitable design to each industrial organization or political subdivision which qualifies for such recognition under regulations established under this subsection.

(3) The President of the United States, the Governor of the appropriate State, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall be notified of the award by the Administrator and the awarding of such recognition shall be published in the Federal Register.

(f) Detail of Environmental Protection Agency personnel to State water pollution control agencies.

Upon the request of a State water pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter. (June 30, 1948, ch. 758, title V, § 501, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 885.)

§ 1362. Definitions.

Except as otherwise specifically provided, when used in this chapter:

(1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.

(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of

the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

(8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term "discharge of a pollutant", and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D—Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems apropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. (June 30, 1948, ch. 758, title V, § 502, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 886.)

§ 1363. Water Pollution Control Advisory Board.

(a)(1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the members first taking office after June 30, 1956, shall expire as follows: three at the end of one year after such date, three at the end of two years after such date, and three at the end of three years after such date, as designated by the President at the time of appointment, and (iii) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members appointed by the President shall be eligible for reappointment within one year after the end of his preceding term.

(B) The members of the Board who are not officers or employees of the United States, while attending conferences or meetings of the Board or while serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including travel-time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(b) The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter.

(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board shall be provided from the personnel of the Environmental Protection Agency. (June 30, 1948, ch. 758, title V, § 503, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 887.)

§ 1364. Emergency powers.

Notwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary. (June 30, 1948, ch. 758, title V, § 504, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 888.)

§ 1365. Citizen suits.

(a) Authorization; jurisdiction.

Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice.

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator.

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Litigation costs.

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation.

For purposes of this section, the term "effluent standard or limitation under this chapter" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title, (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; or (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title).

(g) Citizen.

For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

(h) Civil action by State Governors.

A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State. (June 30, 1948, ch. 758, title V, § 505, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 888.)

§ 1366. Appearance.

The Administrator shall request the Attorney General to appear and represent the United States in any civil or criminal action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator within a reasonable time, that he will appear in a civil action, attorneys who are officers or employees of the Environmental Protection Agency shall appear and represent the United States in such action. (June 30, 1948, ch. 758, title V, § 506, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 889.)

§ 1367. Employee protection.

(a) Discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohibited.

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Application for review; investigation; hearing; review.

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of Title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this chapter.

(c) Costs and expenses.

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Deliberate violations by employee acting without direction from his employer or his agent.

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or other limitation under section 1311 or 1312 of this title, standards of performance under section 1316 of this title, effluent standard, prohibition or pretreatment standard under section 1317 of this title, or any other prohibition or limitation established under this chapter.

(e) Investigations of employment reductions.

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this chapter, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, lay-off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of Title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this chapter. (June 30, 1948, ch. 758, title V, § 507, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 890.)

§ 1368. Federal procurement.

(a) Contracts with violators prohibited.

No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 1319(c) of this title, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction

occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

(b) Notification of agencies.

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Implementation by Presidential order.

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's water, the President shall, not more than one hundred and eighty days after October 18, 1972, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions.

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption

(e) Annual report to Congress.

The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance. (June 30, 1948, ch. 758, title V, § 508, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 891.)

§ 1369. Administrative procedure and judicial review.

(a)(1) For purposes of obtaining information under section 1315 of this title, or carrying out section 1367(e) of this title, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) The district courts of the United States are authorized, upon application by the Administrator, to issue subpenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under sections 1314(b) and (c) of this title. Any papers, books, documents, or other information or part thereof, obtained by reason of such a subpena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, or 1316 of this title, and (F) in issuing or denying any permit under section 1342 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(c) In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or

new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence. (June 30, 1948, ch. 758, title V, § 509, as added Oct. 18 1972, Pub. L. 92–500, § 2, 86 Stat. 891, and amended Dec. 28, 1973, Pub. L. 93–207, § 1 (6), 87 Stat. 906.)

AMENDMENTS

1973—Subsec. (b)(1)(C). Pub. L. 93–207 substituted "pretreatment" for "treatment".

§ 1370. State authority.

Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States. (June 30, 1948, ch. 758, title V, § 510, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 893.)

§ 1371. Authority under other laws and regulations.

(a) This chapter shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this chapter; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899; except that any permit issued under section 1344 of this title shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 403 of this title, or (3) affecting or impairing the provisions of any treaty of the United States.

(b) Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 and the Supervisory Harbors Act of 1888 shall be regulated pursuant to this chapter, and not subject to such Act of 1910 and the Act of 1888 except as to effect on navigation and anchorage.

(c)(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 1281 of this title, and the issuance of a permit under section 1342 of this title for the discharge of any pollutant by a new source as defined in section 1316 of this title, no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969; and

(2) Nothing in the National Environmental Policy Act of 1969 shall be deemed to—

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this chapter or the adequacy of any certification under section 1341 of this title; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.

(d) Notwithstanding this chapter or any other provision of law, the Administrator (1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in subchapter II of this chapter), any water pollution control agreement which may have been entered into between the United States and any other nation, and (2) shall not consider any such agreement in the approval of any such priority ranking. (June 30, 1948, ch. 758, title V, § 511, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 893, and amended Jan. 2, 1974, Pub. L. 93–243, § 3, 87 Stat. 1069.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–243 added subsec. (d).

§ 1372. Labor standards.

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor, in accordance with the Davis-Bacon Act. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40. (June 30, 1948, ch. 758, title V, § 513, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 894.)

§ 1373. Public health agency coordination.

The permitting agency under section 1342 of this title shall assist the applicant for a permit under such section in coordinating the requirements of this chapter with those of the appropriate public health agencies. (June 30, 1948, ch. 758, title V, § 514, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 894.)

§ 1374. Effluent Standards and Water Quality Information Adivsory Committee.

(a) Establishment; membership; term.

(1) There is established on[1] Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after October 18, 1972.

(2) All members of the Committee shall be se-

[1] So in original.

lected from the scientific community, qualified by education, training, and experience to provide, assess, and evaluate scientific and technical information on effluent standards and limitations.

(3) Members of the Committee shall serve for a term of four years, and may be reappointed.

(b) Action on proposed regulations.

(1) No later than one hundred and eighty days prior to the date on which the Administrator is required to publish any proposed regulations required by section 1314(b) of this title, any proposed standard of performance for new sources required by section 1316 of this title, or any proposed toxic effluent standard required by section 1317 of this title, he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing by the Committee, to be held within thirty days.

(2) No later than one hundred and twenty days after receipt of such notice, the Committee shall transmit to the Administrator such scientific and technical information as is in its possession, including that presented at any public hearing, related to the subject matter contained in such notice.

(3) Information so transmitted to the Administrator shall constitute a part of the administrative record and comments on any proposed regulations or standards as information to be considered with other comments and information in making any final determinations.

(4) In preparing information for transmittal, the Committee shall avail itself of the technical and scientific services of any Federal agency, including the United States Geological Survey and any national environmental laboratories which may be established.

(c) Secretary; legal counsel; compensation.

(1) The Committee shall appoint and prescribe the duties of a Secretary, and such legal counsel as it deems necessary. The Committee shall appoint such other employees as it deems necessary to exercise and fulfill its powers and responsibilities. The compensation of all employees appointed by the Committee shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of Title 5.

(2) Members of the Committee shall be entitled to receive compensation at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of Title 5.

(d) Quorum; special panel.

Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

(e) Rules.

The Committee is authorized to make such rules as are necessary for the orderly transaction of its business. (June 30, 1948, ch. 758, title V, § 515, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 894.)

§ 1375. Reports to Congress.

(a) Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this chapter, on measures taken toward implementing the objective of this chapter, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 1252 of this title, areawide plans under section 1288 of this title, basin plans under section 1289 of this title, and plans under section 1313(e) of this title; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status of State programs, including a detailed summary of the progress obtained as compared to that planned under State program plans for development and enforcement of water quality requirements; (5) the identification and status of enforcement actions pending or completed under this chapter during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this chapter; (7) a summary of the results of the survey required to be taken under section 1290 of this title; (8) his activities including recommendations under sections 1259 through 1261 of this title; and (9) all reports and recommendations made by the Water Pollution Control Advisory Board.

(b)(1) The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agencies, shall make (A) a detailed estimate of the cost of carrying out the provisions of this chapter; (B) a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (C) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (D) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this chapter or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Admin-

istrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA–1, O.M.B. No. 158–R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 1281(g)(2)(A) of this title and water quality standards established pursuant to section 1313 of this title, and all costs of treatment works as defined in section 1292(2) of this title, including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974. (June 30, 1948, ch. 758, title V, § 516, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 895, and amended Jan. 2, 1974, Pub. L. 93–243, § 4, 87 Stat. 1069.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–243 designated existing paragraph as par. (1) and cls. (1) to (4) as (A) to (D), and added par. (2).

14. Pollution of the Sea by Oil

33 U.S.C. 1001–1015

(See Oil Pollution Act of 1961 under title VIII *Oceanography*)

15. Prevention, Control and Abatement of Air and Water Pollution of Federal Facilities

Ex. Ord. 11507

(See Exec. Ord. 11507 under title III *Executive Orders*)

16. Protection of Navigable Waters

33 U.S.C. 403–466g–1

Sec.

403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in.

* * * * *

407. Deposit of refuse in navigable waters generally.

407a. Deposit of debris of mines and stamp works

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411. Penalty for wrongful deposit of refuse; use of or injury to harbor improvements, and obstruction of navigable waters generally.

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413. Duty of United States attorneys and other Federal officers in enforcement of provisions; arrest of offenders.

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419. Regulation by Secretary governing transportation and dumping of dredgings, refuse, etc., into navigable waters; oyster lands; appropriations.

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421. Deposit of refuse, etc., in Lake Michigan near Chicago

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426. Investigations concerning erosion of shores of coastal and lake waters.

426–1. Coastal Engineering Research Center; establishment; powers and functions.

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441. Deposit of refuse prohibited; penalty.

442. Liability of officers of towing vessel.

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446 Inspectors; appointment, powers, and duties.

447. Bribery of inspector; penalty.

448. Return of permit; penalty for failure to return.

449. Disposition of dredged matter; persons liable; penalty.

450. Liability of vessel.

451. Supervisor of harbor; appointment and duties.

451a. Harbors subject to sections 441 to 451b of this title.

451b. Same; waters included.

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454. Consent of Congress to obstruction of waters by New York City.

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466g–1. Controversies involving construction or application of interstate compacts and pollution of waters.

(a) Jurisdiction of actions by States.

(b) Amount in controversy; residence, situs or citizenship; nature, character, or legal status of parties.

(c) Suits between States signatory to interstate compact.

(d) Venue.

§ 403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in.

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same. (Mar. 3, 1899, ch. 425, § 10, 30 Stat. 1151.)

* * * * *

§ 407. Deposit of refuse in navigable waters generally.

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful. (Mar. 3, 1899, ch. 425, § 13, 30 Stat. 1152.)

§ 407a. Deposit of debris of mines and stamp works.

In places where harbor-lines have not been established, and where deposits of debris of mines or stamp works can be made without injury to navigation, within lines to be established by the Secretary of the Army, said officer may, and is authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him. (Aug. 5, 1886, ch. 929, § 2, 24 Stat. 329.)

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§ 411. Penalty for wrongful deposit of refuse; use of or injury to harbor improvements, and obstruction of navigable waters generally.

Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections 407, 408, and 409 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. (Mar. 3, 1899, ch. 425, § 16, 30 Stat. 1153.)

* * * * *

§ 413. Duty of United States attorneys and other Federal officers in enforcement of provisions; arrest of offenders.

The Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of sections 401, 403, 404, 406, 407, 408, 409, 411, 549, 686, and 687 of this title; and it shall be the duty of United States attorneys to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of the Army or by any of the officials hereinafter designated, and it shall furthermore be the duty of said United States attorneys to report to the Attorney General of the United States the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of the Army by the Attorney General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of the Army, and the United States collectors of customs and other revenue officers shall have power and authority to swear out process, and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the said sections, or who may violate any of the provisions of the same: *Provided*, That no person committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under such sections, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. (Mar. 3, 1899, ch.

425, § 17, 30 Stat. 1153; June 25, 1948, ch. 646, § 1, 62 Stat. 909, eff. Sept. 1, 1948.)

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§ 419. Regulation by Secretary governing transportation and dumping of dredgings, refuse, etc., into navigable waters; oyster lands; appropriations.

The Secretary of the Army is authorized and empowered to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings, earth, garbage, and other refuse materials of every kind or description, whenever in his judgment such regulations are required in the interest of navigation. Such regulations shall be posted in conspicuous and appropriate places for the information of the public; and every person or corporation which shall violate the said regulations, or any of them, shall be deemed guilty of a misdemeanor and shall be subject to the penalties prescribed in sections 411 and 412 of this title, for violation of the provisions of section 407 of this title: *Provided*, That any regulations made in pursuance hereof may be enforced as provided in section 413 of this title, the provisions whereof are made applicable to the said regulations: *Provided further*, That this section shall not apply to any waters within the jurisdictional boundaries of any State which are now or may hereafter be used for the cultivation of oysters under the laws of such State, except navigable channels which have been or may hereafter be improved by the United States, or to be designated as navigable channels by competent authority, and in making such improvements of channels, the material dredged shall not be deposited upon any ground in use in accordance with the laws of such State for the cultivation of oysters, except in compliance with said laws: *And provided further*, That any expense necessary in executing this section may be paid from funds available for the improvement of the harbor or waterway, for which regulations may be prescribed, and in case no such funds are available the said expense may be paid from appropriations made by Congress for examinations, surveys, and contingencies of rivers and harbors. (Mar. 3, 1905, ch. 1482, § 4, 33 Stat. 1147.)

* * * * *

§ 421. Deposit of refuse, etc., in Lake Michigan near Chicago.

It shall not be lawful to throw, discharge, dump, or deposit, or cause, suffer, or procure, to be thrown, discharged, dumped, or deposited, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state into Lake Michigan, at any point opposite or in front of the county of Cook, in the State of Illinois, or the county of Lake in the State of Indiana, within eight miles from the shore of said lake, unless said material shall be placed inside of a breakwater so arranged as not to permit the escape of such refuse material into the body of the lake and cause contamination thereof; and no officer of the Government shall dump or cause or authorize to be dumped any material contrary to the provisions of this section: *Provided, however*, That the provisions of this section shall not apply to work in connection with the construction, repair, and protection of breakwaters and other structures built in aid of navigation, or for the purpose of obtaining water supply. Any person violating any provision of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined for each offense not exceeding $1,000. (June 23, 1910, ch. 359, 36 Stat. 593.)

* * * * *

§ 426. Investigations concerning erosion of shores of coastal and lake waters.

The Chief of Engineers of the United States Army, under the direction of the Secretary of the Army, is authorized and directed to cause investigations and studies to be made in cooperation with the appropriate agencies of the various States on the Atlantic, Pacific, and gulf coasts and on the Great Lakes, and of the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States, with a view to devising effective means of preventing erosion of the shores of coastal and lake waters by waves and currents; and any expenses incident and necessary thereto may be paid from funds appropriated for General Investigations, Civil Functions, Department of the Army: *Provided*, That the Department of the Army may release to the appropriate cooperating agencies information obtained by these investigations and studies prior to the formal transmission of reports to Congress: *Provided further*, That no money shall be expended under authority of this section in any State which does not provide for cooperation with the agents of the United States and contribute to the project such funds or services as the Secretary of the Army may deem appropriate and require; that there shall be organized under the Chief of Engineers, United States Army, a Board of seven members, of whom four shall be officers of the Corps of Engineers and three shall be civilian engineers selected by the Chief of Engineers with regard to their special fitness in the field of beach erosion and shore protection. The Board will furnish such technical assistance as may be directed by the Chief of Engineers in the conduct of such studies as may be undertaken and will review the reports of the investigations made. In the consideration of such studies as may be referred to the Board by the Chief of Engineers, the Board shall, when it considers it necessary and with the sanction of the Chief of Engineers, make, as a board or through its members, personal examination of localities under investigation: *Provided further*, That the civilian members of the Board may be paid at rates not to exceed $100 a day for each day of attendance at Board meetings, not to exceed thirty days per annum, in addition to the traveling and other necessary expenses connected with their duties on the Board in accordance with the provisions of section 73b–2 of Title 5. (July 3, 1930, ch. 847, § 2, 46 Stat. 945; July 14, 1960, Pub. L. 86–645, title I, § 103, 74 Stat. 484.)

AMENDMENTS

1960—Pub. L. 86–645, among other changes, substituted provisions requiring the three civilian members of the Board to be civilian engineers selected by the Chief of Engineers with regard to their special fitness in the field

of beach erosion and shore protection for provisions which required the civilian members to be selected with regard to their special fitness from among the State agencies cooperating with the Department of the Army, and provisions authorizing payment of civilian members at rates not to exceed $100 a day, for not more than 30 days per annum, for provisions which required the States to pay the salaries of the civilian members.

§ 426–1. Coastal Engineering Research Center; establishment; powers and functions.

There shall be established under the Chief of Engineers, United States Army, a Coastal Engineering Research Center which, except as hereinafter provided in section 426–3 of this title, shall be vested with all the functions of the Beach Erosion Board, including the authority to make general investigations as provided in section 426a of this title, and such additional functions as the Chief of Engineers may assign. (Pub. L. 88–172, § 1, Nov. 7, 1963, 77 Stat. 304.)

§ 426–2. Board on Coastal Engineering Research.

The functions of the Coastal Engineering Research Center established by section 426–1 of this title, shall be conducted with the guidance and advice of a Board on Coastal Engineering Research, constituted by the Chief of Engineers in the same manner as the present Beach Erosion Board. (Pub. L. 88–172, § 2, Nov. 7, 1963, 77 Stat. 305.)

§ 426–3. Transfer of functions of Beach Erosion Board.

All functions of the Beach Erosion Board pertaining to review of reports of investigations made concerning erosion of the shores of coastal and lake waters, and the protection of such shores, are hereby transferred to the Board established by section 541 of this title, referred to as the Board of Engineers for Rivers and Harbors. (Pub. L. 88–172, § 3, Nov. 7, 1963, 77 Stat. 305.)

§ 426a. Additional investigations concerning erosion of shores of coastal and lake waters; payment of costs; definition of shores.

In addition to participating in cooperative investigations and studies with agencies of the various States as authorized in section 426 of this title, it shall be the duty of the Chief of Engineers, through the Coastal Engineering Research Center, to make general investigations with a view to preventing erosion of the shores of the United States by waves and currents and determining the most suitable methods for the protection, restoration, and development of beaches; and to publish from time to time such useful data and information concerning the erosion and protection of beaches and shore lines as the Center and to publish from time to time such useful data and information concerning the erosion and protection of beaches and shore lines as the Board may deem to be of value to the people of the United States. The cost of the general investigations authorized by sections 426a to 426d of this title shall be borne wholly by the United States. As used in said sections, the word "shores" includes the shore lines of the Atlantic and Pacific Oceans, the Gulf of Mexico, the Great Lakes, Lake Champlain, and estuaries and bays directly connected therewith. (July 31, 1945, ch. 334, § 1, 59 Stat. 508.)

* * * * *

NEW YORK HARBOR, HARBOR OF HAMPTON ROADS, AND HARBOR OF BALTIMORE

§ 441. Deposit of refuse prohibited; penalty.

The placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the waters of any harbor subject to sections 441 to 451b of this title, within the limits which shall be prescribed by the supervisor of the harbor, is strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than $250 nor more than $2,500, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor. (June 29, 1888, ch. 496, § 1, 25 Stat. 209; Aug. 28, 1958, Pub. L. 85–802, § 1 (1), 72 Stat. 970.)

AMENDMENTS

1958—Pub. L. 85–802 substituted "waters of any harbor subject to sections 441—451b of this title," for "tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of long Island Sound,".

§ 442. Liability of officers of towing vessel.

Any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of any harbor subject to sections 441 to 451b of this title, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor, shall be deemed guilty of a violation of section 441 of this title, and shall, upon conviction, be punishable as provided for offenses in violation of section 441 of this title, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. (June 29, 1888, ch. 496, § 2, 25 Stat. 209; Aug. 28, 1958, Pub. L. 85–802, § 1 (2), 72 Stat. 970.)

AMENDMENTS

1958—Pub. L. 85–802 substituted "any harbor subject to section 441—451b of this title" for "the harbor of New York, or in its adjacent or tributary waters, or in those of Long Island Sound", and eliminated "hereinafter mentioned" following "supervisor of the harbor".

§ 443. Permit for dumping; penalty for taking or towing boat or scow without permit.

In all cases of receiving on board of any scows or boats such forbidden matter or substance as described in section 441 of this title, the owner or master, or person acting in such capacity on board

of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed, as provided in section 451 of this title, a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $1,000 nor less than $500, and in addition thereto the master of any tug or towboat so offending shall have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

§ 444. Dumping at other place than designated dumping grounds; penalty; person liable; excuses for deviation.

Any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and master, or person acting in the capacity of master, of any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor as provided in section 441 of this title; and the owner and master, or person acting in the capacity of master, of any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of sections 441 to 452 of this title, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever shall operate to release the owners and master and employees of scows and towboats from the penalties mentioned in section 441 of this title. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

* * * * *

§ 446. Inspectors; appointment, powers, and duties.

Each supervisor of a harbor is authorized and directed to appoint inspectors and deputy inspectors, and for the purposes of enforcing sections 441 to 452 of this title, and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority.

First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by sections 441 to 451b of this title, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit, as required in section 443 of this title, or otherwise violating title, and to seize and hold said boats until they are discharged by action of the commission, judge, or court of the United States before whom the offending persons are brought.

Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds.

Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of sections 441 to 452 of this title.

Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into tidal waters of the harbor in violation of section 441 of this title. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426; Aug. 28, 1958, Pub. L. 85-802, § 1 (3), 72 Stat. 970.)

§ 447. Bribery of inspector; penalty.

Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward, or makes any offer of the same to any inspector, deputy inspector, or other employee of the office of any supervisor of a harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of sections 441 to 451b of this title, shall, on conviction thereof, be fined not less than $500 nor more than $1,000, and be imprisoned not less than six months nor more than one year. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426; Aug. 28, 1958, Pub. L. 85-802, § 1 (4), 72 Stat. 970.)

§ 448. Return of permit; penalty for failure to return.

Every permit issued in accordance with the provisions of section 443 of this title, which may not be taken up by an inspector or deputy inspector, shall be returned within four days after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and, if so, the time and place of dumping. Any person violating the provisions of this section shall be liable to a fine of not more than $500 nor less than $100. (June 29, 1888, ch. 496, § 3, 25 Stat. 209; Aug. 18, 1894, ch. 299, § 3, 28 Stat. 360; May 28, 1908, ch. 212, § 8, 35 Stat. 426.)

§ 449. Disposition of dredged matter; persons liable; penalty.

All mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in any harbor subject to sections 441 to 451b of this title, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of that harbor to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in section 443 of this title prescribed, and not otherwise. Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense, and shall be punished by a fine equal to the sum of $5 for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section. (June 29, 1888, ch. 496, § 4, 25 Stat. 210; Aug. 28, 1958, Pub. L. 85–802, § 1 (5), 72 Stat. 970.)

AMENDMENTS

1958—Pub. L. 85–802 substituted "any harbor subject to sections 441—451b of this title" for "the harbor of New York, or the waters adjacent or tributary thereto", and substituted "the waters of that harbor" for "the waters of the harbor of New York".

§ 450. Liability of vessel.

Any boat or vessel used or employed in violating any provision of sections 441 to 451b of this title, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against, summarily by way of libel in any district court of the United States having jurisdiction thereof. (June 29, 1888, ch. 496, § 4, 25 Stat. 210.)

§ 451. Supervisor of harbor; appointment and duties.

An officer of the Corps of Engineers shall, for each harbor subject to sections 441 to 451b of this title, be designated by the Secretary of the Army as supervisor of the harbor, to act under the direction of the Chief of Engineers in enforcing the provisions of sections 441 to 451b of this title, and in detecting offenders against the same. Each such officer shall have personal charge and supervision under the Chief of Engineers, and shall direct the patrol boats and other means to detect and bring to punishment offenders against the provisions of said sections. (June 29, 1888, ch. 496, § 5, 25 Stat. 210; June 29, 1949, ch. 278, 63 Stat. 300; July 12, 1952, ch. 707, 66 Stat. 596; Aug. 28, 1958, Pub. L. 85–802, § 1 (6), 72 Stat. 970.)

AMENDMENTS

1958—Pub. L. 85–802 inserted "for each harbor subject to sections 441—451b of this title," and substituted "each such officer" for "This officer".

1952—Act July 12, 1952, transferred enforcement responsibilities of this section from a Naval officer to the Army district engineer at New York.

1949—Act June 29, 1949, repealed phrase "shall receive the sea-pay of his grade and" following "this officer".

§ 451a. Harbors subject to sections 441 to 451b of this title.

The following harbors shall be subject to sections 441 to 451b of this title:

(1) The harbor of New York.

(2) The harbor of Hampton Roads.

(3) The harbor of Baltimore.

(June 29, 1888, ch. 496, § 6, 25 Stat. 210; Aug. 28, 1958, Pub. L. 85–802, § 1 (7), 72 Stat. 970.)

AMENDMENTS

1958—Pub. L. 85–802 substituted provisions making harbors of New York, Hampton Roads, and Baltimore subject to sections 441—451b of this title, for appropriation provisions.

§ 451b. Same; waters included.

For the purposes of sections 441 to 451b of this title—

(1) The term "harbor of New York" means the tidal waters of the harbor of New York, its adjacent and tributary waters, and those of Long Island Sound.

(2) The term "harbor of Hampton Roads" means the tidal waters of the harbors of Norfolk, Portsmouth, Newport News, Hampton Roads, and their adjacent and tributary waters, so much of the Chesapeake Bay and its tributaries as lies within the State of Virginia, and so much of the Atlantic Ocean and its tributaries as lies within the jurisdiction of the United States within or to the east of the State of Virginia.

(3) The term "harbor of Baltimore" means the tidal waters of the harbor of Baltimore and its adjacent and tributary waters, and so much of Chesapeake Bay and its tributaries as lie within the State of Maryland. (June 29, 1888, ch. 496, § 7, as added Aug. 28, 1958, Pub. L. 85–802, § 1(8), 72 Stat. 970.)

* * * * *

§ 454. Consent of Congress to obstruction of waters by New York City.

The consent of Congress is given to the city of New York, in the State of New York, to obstruct navigation of any river or other waterway which does not form a connecting link between other

navigable waters of the United States, and lying wholly within the limits of said city, by closing all or any portion of the same or by building structures in or over the same when the said city shall be lawfully authorized to do so by the State of New York: *Provided, however,* That any such obstruction shall be unlawful unless the location and plans for the proposed work or works before the commencement thereof shall have been filed with and approved by the Secretary of the Army and Chief of Engineers; and when the plans for any such obstruction have been approved by the Chief of Engineers and by the Secretary of the Army it shall not be lawful to deviate from such plans either before or after the completion of such obstruction, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and the Secretary of the Army: *And provided further,* That the city of New York shall be liable for any damage that may be inflicted upon private property by reason of any of the provisions of this section.

The right to alter, amend, or repeal this section is expressly reserved, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the city of New York, or to the owner or owners, or any other persons interested in any obstruction which shall have been constructed under its provisions. (June 25, 1910, ch. 436, §§ 1, 2, 36 Stat. 866, 867.)

* * * * *

§ 466g–1. Controversies involving construction or application of interstate compacts and pollution of waters.

(a) Jurisdiction of actions by States.

The United States district courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other court of the United States or of any State of the United States in matters in which the Supreme Court, or any other court, has original jurisdiction) of any case or controversy—

(1) which involves the construction or application of an interstate compact which (A) in whole or in part relates to the pollution of the waters of an interstate river system or any portion thereof, and (B) expresses the consent of the States signatory to said compact to be sued in a district court in any case or controversy involving the application or construction thereof; and

(2) which involves pollution of the waters of such river system, or any portion thereof, alleged to be in violation of the provisions of said compact; and

(3) in which one or more of the States signatory to said compact is a plaintiff or plaintiffs; and

(4) which is within the judicial power of the United States as set forth in the Constitution of the United States.

(b) Amount in controversy; residence, situs or citizenship; nature, character, or legal status of parties.

The district courts shall have original jurisdiction of a case or controversy such as is referred to in subsection (a) of this section, without any requirement, limitation, or regard as to the sum or value of the matter in controversy, or of the place of residence or situs or citizenship, or of the nature, character, or legal status, of any of the proper parties plaintiff or defendant in said case or controversy other than the signatory State or States plaintiff or plaintiffs referred to in paragraph (3) of subsection (a) of this section: *Provided,* That nothing in this section shall be construed as authorizing a State to sue its own citizens in said courts.

(c) Suits between States signatory to interstate compact.

The original jurisdiction conferred upon the district courts by this section shall include, but not be limited to, suits between States signatory to such interstate compact: *Provided,* That nothing in this section shall be construed as authorizing a State to sue another State which is not a signatory to such compact in said courts.

(d) Venue.

The venue of such case or controversy shall be as prescribed by law: *Provided,* That in addition thereto, such case or controversy may be brought in in any judicial district in which the acts of pollution complained of, or any portion thereof, occur, regardless of the place or places of residence, or situs, of any of the parties plaintiff or defendant. (Pub. L. 87–830, § 1, Oct. 15, 1962, 76 Stat. 957.)

17. Protection of Navigable Waters—Permit Programs

Ex. Ord. 11574, 35 F.R. 19627

(See Ex. Order 11574 under title III *Executive Orders*)

18. Safe Drinking Water

Pub. L. 93–523 (88 Stat. 1661)

(See Safe Drinking Water under title XII *Water Resources*)

19. Saline and Salt Waters

42 U.S.C. 1959–1959h

(See Saline and Salt Waters under title XII *Water Resources*)

20. Waste Materials Tonnage for Shipping

46 U.S.C. 77(e)

§ 77. Tonnage.

* * * * *

From the gross tonnage of every vessel of the United States there shall be deducted—

* * * * *

(e) Space occupied by machinery used exclusively to separate, clarify, purify, or process, a ship's own slop oil mixture, tank-cleaning residue, bilge residue, or other waste materials, including sewage garbage, galley wastes, or trash and space occupied by any tank, tanks, or collection area used exclusively for the carriage or collection of such slop oil mixture, tank-cleaning residue, or other waste materials, but not to exceed a maximum space deduction established by regulations hereunder. The Secretary of the department in which the Coast Guard is operating in consultation with the Administrator of the Environmental Protection Agency, shall issue regulations to define the slop oil mixtures, cleaning residue, and waste materials, establish the maximum deductions which may be made, define the manner in which the spaces shall be used and marked, and as necessary otherwise to carry out the provisions of this paragraph.

* * * * *

AMENDMENTS

1974—Subsec. (e). Pub. L. 93–524, § 1, added subsec. (e). Former subsec. (e) redesignated (f).

21. Water Pollution—Administration of Federal Water Pollution, etc.

Ex. Order 11738

(See Ex. Order 11738 under title III *Executive Orders*)

22. Water Pollution Control in Appalachia

40 App. U.S.C. § 1–2, 203, 205–206, 212

(See Water Pollution Control in Appalachia under title IX *Pollution Control, Financing*)

23. Wild and Scenic Rivers Act

16 U.S.C. 1271–1287

(See Wild and Scenic Rivers Act under title II *Environment, Generally*)

TITLE XII—WATER RESOURCES

1. Basic Water and Sewer Facilities

42 U.S.C. 3101–3108

(See Basic Water and Sewer Facilities under title IX *Pollution Control, Financing*)

2. Boundary Water Commission—Mexico

22 U.S.C. 277d–12 through 277d–16

§ 277d–12. Expenditures for flood lighting, rescue operations, repairs or restoration of flood control works threatened or destroyed by floodwaters of Rio Grande.

On and after June 20, 1956, in addition to the funds available under the appropriation "Rio Grande emergency flood protection", the United States Commissioner is authorized to expend from any appropriation available to the International Boundary and Water Commission, United States and Mexico, American Section, such sums as may be necessary for prosecution of emergency flood fighting and rescue operations, repairs or restoration of any flood control works threatened or destroyed by floodwaters of the Rio Grande. (June 20, 1956, ch. 414, title I, § 101, 70 Stat. 302.)

§ 277d–13. Authorization for international storage dam on the Rio Grande.

The Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States and Mexico, is hereby authorized to conclude with the appropriate official or officials of the Government of Mexico an agreement for the joint construction, operation, and maintenance by the United States and Mexico, in accordance with the provisions of the treaty of February 3, 1944, with Mexico, of a major international storage dam on the Rio Grande at the site and having substantially the characteristics described in minute numbered 207 adopted June 19, 1958, by the said Commission, and in the "Rio Grande International Storage Dams Project—Report on Proposed Dam and Reservoir" prepared by the United States Section of the said Commission and dated September 1958. (Pub. L. 86–605, § 1, July 7, 1960, 74 Stat. 360.)

§ 277d–14. Same; construction, operation, and maintenance on self-liquidating basis of facilities for generating hydroelectric energy.

If agreement is concluded pursuant to section 277d–13 of this title for the construction of a major international storage dam the Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States and Mexico, is authorized to conclude with the appropriate official or officials of Mexico an agreement consistent with article 7 of the treaty of February 3, 1944, for the construction, operation, and maintenance on a self-liquidating basis, for the United States share, of facilities for generating hydroelectric energy at said dam.

If agreement for the construction of separate facilities for generating hydroelectric energy is concluded, the United States Commissioner, International Boundary and Water Commission, United States and Mexico, is directed to construct, operate, and maintain such self-liquidating facilities for the United States. (Pub. L. 86–605, § 2, July 7, 1960, 74 Stat. 360.)

§ 277d–15. Same; integration of operation of dam with other United States water conservation activities.

If a dam is constructed pursuant to an agreement concluded under the authorization granted by section 277d–13 of this title, its operation for conservation and release of United States share of waters shall be integrated with other United States water conservation activities on the Rio Grande below Fort Quitman, Texas, in such manner as to provide the maximum feasible amount of water for beneficial use in the United States with the understandings that (a) releases of United States share of waters from said dam for domestic, municipal, industrial, and irrigation uses in the United States shall be made pursuant to order by the appropriate authority or authorities of the State of Texas, and (b) the State of Texas having stipulated that the amount of water that will be available for use in the United States below Falcon Dam after the proposed dam is placed in operation will be not less than the amount available under existing conditions of river development, and to carry out such understandings and said stipulation the conservation storage of said dam shall be used, and it shall be the exclusive responsibility of the appropriate authority or authorities of said State to distribute available United

States share of waters of the Rio Grande in such manner as will comply with said stipulation. (Pub. L. 86–605, § 3, July 7, 1960, 74 Stat. 360.)

§ 277d–16. Same; authorization of appropriations.

There is hereby authorized to be appropriated to the Department of State for the use of the United States Section, International Boundary and Water Commission, United States and Mexico, such sums as may be necessary to carry out the provisions of sections 277d–13 to 277d–16 of this title. (Pub. L. 86–605, § 4, July 7, 1960, 74 Stat. 361.)

3. Chamizal Boundary Settlement

22 U.S.C. 277d–17 through 277d–25

§ 277d–17. Chamizal boundary settlement; investigations relating to river channel; acquisition of lands; relocation of facilities.

In connection with the convention between the United States of America and the United Mexican States for the solution of the problem of the Chamizal, signed August 29, 1963, the Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States and Mexico, is authorized—

a. to conduct technical and other investigations relating to: the demarcation or monumentation of the boundary between the United States and Mexico; flood control; water resources; sanitation and prevention of pollution; channel relocation, improvement, and stabilization; and other matters related to the new river channel.

b. to acquire by donation, purchase, or condemnation, all lands required—

(1) for transfer to Mexico as provided in said convention;

(2) for construction of that portion of the new river channel and the adjoining levee in the territory of the United States;

(3) for relocation of highways, roadways, railroads, telegraph, telephone, electric transmission lines, bridges, related facilities, and any publicly owned structure or facility, the relocation of which, in the judgment of the said Commissioner, is necessitated by the project.

c. For the purpose of effecting said relocations—

(1) to perform any or all work involved in said relocations;

(2) to enter into contracts with the owners of properties to be relocated whereby they undertake to acquire any or all properties needed for said relocations, or undertake to perform any or all work involved in said relocations;

(3) to convey or exchange properties acquired or improved by the United States under sections 277d–17 to 277d–25 of this title or under said convention, with or without improvements, or to grant term or perpetual easements therein or thereover.

(Pub. L. 88–300, § 1, Apr. 29, 1964, 78 Stat. 184.)

§ 277d–18. Same; construction, operation, and maintenance of works.

The United States Commissioner is authorized to construct, operate, and maintain all works provided for in said convention and sections 277d–17 to 277d–25 of this title, and to turn over the operation and maintenance of any such works to any Federal agency, or any State, county, municipality, district, or other political subdivision within which such project or works may be in whole or in part situated, upon such terms, conditions, and requirements as the Commissioner may deem appropriate. (Pub. L. 88–300, § 2, Apr. 29, 1964, 78 Stat. 184.)

§ 277d–19. Same; compensation of owners and tenants to prevent economic injury; regulations.

The United States Commissioner, under regulations approved by the Secretary of State, and upon application of the owners and tenants of lands to be acquired by the United States to fulfill and accomplish the purposes of said convention, and to the extent administratively determined by the Commissioner to be fair and reasonable, is authorized to—

Limitation; statements.

a. Reimburse the owners and tenants for expenses and other losses and damages incurred by them in the process and as a direct result of such moving of themselves, their families, and their possessions as is occasioned by said acquisition: *Provided,* That the total of such reimbursement to the owners and tenants of any parcel of land shall in no event exceed 25 per centum of its fair value, as determined by the Commissioner. No payment under this subsection shall be made unless application therefor is supported by an itemized and certified statement of the expenses, losses, and damages incurred.

Reimbursement of claims relating to abodes, commercial properties, business losses, and penalty costs; board of examiners; personnel, hearings, determination of claims, approval by Commissioner.

b. Compensate the said owners and tenants for identifiable, reasonable, and satisfactorily proved costs and losses to owners and tenants over and above those reimbursed under the foregoing subsection in the categories hereinafter provided, and for which purpose there shall be established by the Commissioner a board of examiners, consisting of such personnel employed and compensation fixed as he deems advisable, without regard to the provisions of the civil service laws and chapter 51 and subchapter III of chapter 53 of Title 5. Said board may hold hearings and shall examine submitted evidence and make determinations, subject to the Commissioner's approval, regarding all claims in said categories as follows:

(1) For properties—

(a) For nonconforming abodes and minimum forms of shelter for which there are no comparable properties on the market in the city of El Paso and concerning which fair market value would be inadequate to find minimum housing of equal utility, compensation to the owner up to an amount which when added to the market value allowed for his property, including land values, would enable purchase of minimum habitable housing of similar utility in another residential section of said city.

(b) For commercial properties for which there are no comparable properties on the market in or near El Paso, Texas, compensation to the owner up to an amount which, when added to the total fair market value, including the land value, would compensate the owner for the "value in use" of the real estate to him. Such "value in use" is to be determined on the basis of replacement cost less deterioration and obsolescence in existing real estate and taking into consideration factors bearing upon income attributable to the real estate.

(2) For loss in business:

(a) Loss of profits directly resulting from relocation, limited to the period between termination of business in the old location and commencement of business in the new, such period not to exceed thirty days.

(b) Loss to owner resulting from inability to rent to others housing or commercial space that can be reasonably related to uncertainties arising out of the pending acquisition of the owner's property by the United States, such losses limited to those incurred after July 18, 1963, and prior to the making by the United States of a firm offer to purchase.

(3) For penalty costs to property owners for prepayment of mortgages incident to acquisition of the properties by the United States.

(Pub. L. 88–300, § 3, Apr. 29, 1964, 78 Stat. 184.)

§ 277d–20. Same; limitation on application for reimbursement or compensation.

Application for reimbursement or compensation under section 277d–19 of this title shall be submitted to the Commissioner within either one year from the date of acquisition or the date of vacating the premises by the applicant, whichever date is later. Applications not submitted within said period shall be forever barred. (Pub. L. 88–300, § 4, Apr. 29, 1964, 78 Stat. 185.)

§ 277d–21. Same; attorneys' fees; penalties.

The Commissioner, in rendering an award in favor of any claimant under section 277d–19 of this title, may, as part of such award, determine and allow reasonable attorneys' fees which shall not exceed 10 per centum of the amount awarded, to be paid out of but not in addition to the amount of award, to the attorneys representing the claimant. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed by the terms of this section, if award be made, shall be fined not more than $2,000 or imprisoned not more than one year, or both. (Pub. L. 88–300, § 5, Apr. 29, 1964, 78 Stat. 185.)

§ 277d–22. Same; prohibition against duplicate payments; eligibility for payments unaffected by means employed for acquisition of property; rights and powers unaffected.

Payments to be made as herein provided shall be in addition to, but not in duplication of, any payments that may otherwise be authorized by law. The means employed to acquire the property, whether by condemnation or otherwise, shall not affect eligibility for reimbursement or compensation under sections 277d–17 to 277d–25 of this title. Nothing contained in such sections shall be construed as creating any legal right or cause of action against the United States or as precluding the exercise by the Government of the right of eminent domain or any other right or power that it may have under such sections or any other law; nor shall such sections be construed as precluding an owner or tenant from asserting any rights he may have under other laws or the Constitution of the United States. (Pub. L. 88–300, §6, Apr. 29, 1964, 78 Stat. 186.)

§ 277d–23. Same; taxation; exclusion from gross income.

No amount received as an award under subsection a. and subsections b. (1) and (3) of section 277d–19 of this title shall be included in gross income for purposes of chapter 1 of Title 26. However, amounts received under subsection b. (1) shall be included in gross income to the extent that such amounts are not used within one year of the receipt thereof to purchase replacement housing or facilities. (Pub. L. 88–300, § 7, Apr. 29, 1964, 78 Stat. 186.)

§ 277d–24. Same; definitions; exemption from operations of Administrative Procedure Act.

As used in sections 277d–17 to 277d–25 of this title, the term "land" shall include interests in land, and the term "fair value" shall mean fair value of the interest acquired. The provisions of such sections shall be exempt from the operations of the Administrative Procedure Act of June 11, 1946, as amended. (Pub. L. 88–300, § 8, Apr. 29, 1964, 78 Stat. 186.)

§ 277d–25. Same; authorization of appropriations.

There are authorized to be appropriated to the Department of State for the use of the United States section of said Commission not to exceed $44,900,000 to carry out the provisions of said convention and sections 277d–17 to 277d–25 of this title and for transfer to other Federal agencies to accomplish by them or other proper agency relocation of their facilities necessitated by the project. Of the appropriations authorized by this section, not to exceed $4,200,000 may be used to carry out the provisions of section 277d–19 of this title. The provisions of section 277d–3 of this title are hereby expressly extended to apply to the carrying out of the provisions of said convention and sections 277d–17 to 277d–25 of this title. (Pub. L. 88–300, § 9, Apr. 29, 1964, 78 Stat. 186.)

4. Coastal Zone Management

16 U.S.C. 1451–1464

(See Coastal Zone Management under title VIII *Oceanography*)

5. Colorado River Basin Salinity Control

43 U.S.C. 1571–1599

SUBCHAPTER I.—PROGRAMS DOWNSTREAM FROM IMPERIAL DAM

SUBCHAPTER II.—MEASURES UPSTREAM FROM IMPERIAL DAM

SUBCHAPTER I.—PROGRAMS DOWNSTREAM FROM IMPERIAL DAM

§ 1571. Water quality improvement.

(a) Authority to proceed with program.

The Secretary of the Interior, hereinafter referred to as the "Secretary", is authorized and directed to proceed with a program of works of improvement for the enhancement and protection of the quality of water available in the Colorado River for use in the United States and the Republic of Mexico, and to enable the United States to comply with its obligations under the agreement with Mexico of August 30, 1973 (Minute No. 242 of the International Boundary and Water Commission, United States and Mexico), concluded pursuant to the Treaty of February 3, 1944 (TS 994), in accordance with the provisions of this chapter.

(b) Desalting complexes and plants.

(1) The Secretary is authorized to construct, operate, and maintain a desalting complex, including (1) a desalting plant to reduce the salinity of drain water from the Wellton-Mohawk division of the Gila project, Arizona (hereinafter referred to as the division), including a pretreatment plant for settling, softening, and filtration of the drain water to be desalted; (2) the necessary appurtenant works including the intake pumping plant system, product waterline, power transmission facilities, and permanent operating facilities; (3) the necessary extension in the United States and Mexico of the existing bypass drain to carry the reject stream from the desalting plant and other drainage waters to the Santa Clara Slough in Mexico, with the part in Mexico, subject to arrangements made pursuant to subsection (d) of this section; (4) replacement of the metal flume in the existing main outlet drain extension with a concrete siphon; (5) reduction of the quantity of irrigation return flows through acquisition of lands to reduce the size of the division, and irrigation efficiency improvements to minimize return flows; (6) acquire on behalf of the United States such lands or interest in lands in the Painted Rock Reservoir as may be necessary to operate the project in accordance with the obligations of Minute No. 242, and (7) all associated facilities including roads, railroad spur, and transmission lines.

(2) The desalting plant shall be designed to treat approximately one hundred and twenty-nine million gallons a day of drain water using advanced technology commercially available. The plant shall effect recovery initially of not less than 70 per centum of the drain water as product water, and shall effect reduction of not less than 90 per centum of the dissolved solids in the feed water. The Secretary shall use sources of electric power supply for the desalting complex that will not diminish the supply of power to preference customers from Federal power systems operated by the Secretary. All costs associated with the desalting plant shall be nonreimbursable.

(c) Replacement water studies.

Replacement of the reject stream from the desalting plant and of any Wellton-Mohawk drainage water bypassed to the Santa Clara Slough to accomplish essential operation except at such times when there exists surplus water of the Colorado River under the terms of the Mexican Water Treaty of 1944, is recognized as a national obligation as provided in section 1512 of this title. Studies to identify feasible measures to provide adequate replacement water shall be completed not later than June 30, 1980. Said studies shall be limited to potential sources within the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are within the natural drainage basin of the Colorado River. Measures found necessary to replace the reject stream from the desalting plant and any Wellton-Mohawk drainage bypassed to the Santa Clara Slough to accomplish essential operations may be undertaken independently of the national obligation set forth in section 1512 of this title.

(d) Advancement of funds for that portion of bypass drain within Mexico.

The Secretary is hereby authorized to advance funds to the United States section, International Boundary and Water Commission (IBWC), for construction, operation, and maintenance by Mexico pursuant to Minute No. 242 of that portion of the bypass drain within Mexico. Such funds shall be transferred to an appropriate Mexican agency, under arrangements to be concluded by the IBWC providing for the construction, operation, and maintenance of such facility by Mexico.

(e) Desalted water exchange.

Any desalted water not needed for the purposes of this subchapter may be exchanged at prices and under terms and conditions satisfactory to the Secretary and the proceeds therefrom shall be deposited in the General Fund of the Treasury. The city of Yuma, Arizona, shall have first right of refusal to any such water.

(f) Return flow reduction.

For the purpose of reducing the return flows from the division to one hundred and seventy-five thousand acre-feet or less, annually, the Secretary is authorized to:

(1) Accelerate the cooperative program of Irrigation Management Services with the Wellton-Mohawk Irrigation and Drainage District, hereinafter referred to as the district, for the purpose of improving irrigation efficiency. The district shall bear its share of the cost of such program as determined by the Secretary.

(2) Acquire by purchase or through eminent domain or exchange, to the extent determined by him to be appropriate, lands or interests in lands to reduce the existing seventy-five thousand developed and undeveloped irrigable acres authorized by the Gila Reauthorization Act. The initial reduction in irrigable acreage shall be limited to approximately ten thousand acres. If the Secretary determines that the irrigable acreage of the division must be reduced below sixty-five thousand acres of irrigable lands to carry out the purpose of this section, the Secretary is authorized, with the consent of the district, to acquire additional lands, as may be deemed by him to be appropriate.

(g) Disposal of acquired lands.

The Secretary is authorized to dispose of the acquired lands and interests therein on terms and conditions satisfactory to him and meeting the objective of this chapter.

(h) Assistance to water users for installation of system improvements.

The Secretary is authorized, either in conjunction with or in lieu of land acquisition, to assist water users in the division in installing system improvements, such as ditch lining, change of field layouts, automatic equipment, sprinkler systems and bubbler systems, as a means of increasing irrigation efficiencies: *Provided, however,* That all costs associated with the improvements authorized herein and allocated to the water users on the basis of benefits received, as determined by the Secretary, shall be reimbursed to the United States in amounts and on terms and conditions satisfactory to the Secretary.

(i) Contract amendment.

The Secretary is authorized to amend the contract between the United States and the district dated March 4, 1952, as amended, to provide that—

(1) the portion of the existing repayment obligation owing to the United States allocable to irrigable acreage eliminated from the division for the purposes of this subchapter, as determined by the Secretary, shall be nonreimbursable; and

(2) if deemed appropriate by the Secretary, the district shall be given credit against its outstanding repayment obligation to offset any increase in operation and maintenance assessments per acre which may result from the district's decreased operation and maintenance base, all as determined by the Secretary.

(j) Acquisition of land for storage.

The Secretary is authorized to acquire through the Corps of Engineers fee title to, or other necessary interests in, additional lands above the Painted Rock Dam in Arizona that are required for the temporary storage capacity needed to permit operation of the dam and reservoir in times of serious flooding in accordance with the obligations of the United States under Minute No. 242. No funds shall be expended for acquisition of land or interests therein until it is finally determined by a Federal court of competent jurisdiction that the Corps of Engineers presently lacks legal authority to use said lands for this purpose. Nothing contained in this subchapter nor any action taken pursuant to it shall be deemed to be a recognition or admission of any obligation to the owners of such land on the part of the United States or a limitation or deficiency in the rights or powers

of the United States with respect to such lands or the operation of the reservoir.

(k) Transfer of funds.

To the extent desirable to carry out subsections (f) (1) and (h) of this section, the Secretary may transfer funds to the Secretary of Agriculture as may be required for technical assistance to farmers, conduct of research and demonstrations, and such related investigations as are required to achieve higher on-farm irrigation efficiencies.

(l) Nonreimbursable costs.

All cost associated with the desalting complex shall be nonreimbursable except as provided in subsections (f) and (h) of this section. (Pub. L. 93–320, title I, § 101, June 24, 1974, 88 Stat. 266.)

§ 1572. Canal or canal lining.

(a) Authorization of construction.

To assist in meeting salinity control objectives of Minute No. 242 during an interim period, the Secretary is authorized to construct a new concrete-lined canal or, to line the presently unlined portion of the Coachella Canal of the Boulder Canyon project, California, from station 2 plus 26 to the beginning of siphon numbered 7, a length of approximately forty-nine miles. The United States shall be entitled to temporary use of a quantity of water, for the purpose of meeting the salinity control objectives of Minute No. 242, during an interim period, equal to the quantity of water conserved by constructing or lining the said canal. The interim period shall commence on completion of construction or lining said canal and shall end the first year that the Secretary delivers main stream Colorado River water to California in an amount less than the sum of the quantities requested by (1) the California agencies under contracts made pursuant to section 617d of this title, and (2) Federal establishments to meet their water rights acquired in California in accordance with the Supreme Court decree in Arizona against California (376 U.S. 340).

(b) Repayment.

The charges for total construction shall be repayable without interest in equal annual installments over a period of forty years beginning in the year following completion of construction: *Provided*, That, repayment shall be prorated between the United States and the Coachella Valley County Water District, and the Secretary is authorized to enter into a repayment contract with Coachella Valley County Water District for that purpose. Such contract shall provide that annual repayment installments shall be nonreimbursable during the interim period, defined in subsection (a) of this section and shall provide that after the interim period, said annual repayment installments or portions thereof, shall be paid by Coachella Valley County Water District.

(c) Acquisition of private lands.

The Secretary is authorized to acquire by purchase, eminent domain, or exchange private lands or interests therein, as may be determined by him to be appropriate, within the Imperial Irrigation District on the Imperial East Mesa which receive, or which have been granted rights to receive, water from Imperial Irrigation District's capacity in the Coachella Canal. Costs of such acquisitions shall be nonreimbursable and the Secretary shall return such lands to the public domain. The United States shall not acquire any water rights by reason of this land acquisition.

(d) Credit to Imperial Irrigation District against final payments for relinquished capacity in Coachella Canal.

The Secretary is authorized to credit Imperial Irrigation District against its final payments for certain outstanding construction charges payable to the United States on account of capacity to be relinquished in the Coachella Canal as a result of the canal lining program, all as determined by the Secretary: *Provided*, That, relinquishment of capacity shall not affect the established basis for allocating operation and maintenance costs of the main All-American Canal to existing contractors.

(e) Transfer of lands to Cocopah Tribe of Indians.

The Secretary is authorized and directed to cede the following land to the Cocopah Tribe of Indians, subject to rights-of-way for existing levees, to be held in trust by the United States for the Cocopah Tribe of Indians:

Township 9 south, range 25 west of the Gila and Salt River meridian, Arizona;

Section 25: Lots 18, 19, 20, 21, 22, and 23;

Section 26: Lots 1, 12, 13, 14, and 15;

Section 27: Lot 3; and all accretion to the above described lands.

The Secretary is authorized and directed to construct three bridges, one of which shall be capable of accommodating heavy vehicular traffic, over the portion of the bypass drain which crosses the reservation of the Cocopah Tribe of Indians. The transfer of lands to the Cocopah Indian Reservation and the construction of bridges across the bypass drain shall constitute full and complete payment to said tribe for the rights-of-way required for construction of the bypass drain and electrical transmission lines for works authorized by this subchapter. (Pub. L. 93–320, Title I, § 102, June 24, 1974, 88 Stat. 268.)

§ 1573. Construction and maintenance of well fields; land acquisition; land replacement; nonreimbursable costs.

(a) The Secretary is authorized to:

(1) Construct, operate, and maintain, consistent with Minute No. 242, well fields capable of furnishing approximately one hundred and sixty thousand acre-feet of water per year for use in the United States and for delivery to Mexico in satisfaction of the 1944 Mexican Water Treaty.

(2) Acquire by purchase, eminent domain, or exchange, to the extent determined by him to be appropriate, approximately twenty-three thousand five hundred acres of lands or interests therein with approximately five miles of the Mexican border on the Yuma Mesa: *Provided, how-*

ever, That any such lands which are presently owned by the State of Arona may be acquired or exchanged for Federal lands.

(3) Any lands removed from the jurisdiction of the Yuma Mesa Irrigation and Drainage District pursuant to clause (2) of this subsection which were available for use under the Gila Reauthorization Act, shall be replaced with like lands within or adjacent to the Yuma Mesa division of the project. In the development of these substituted lands or any other lands within the Gila project, the Secretary may provide for full utilization of the Gila Gravity Main Canal in addition to contracted capacities.

(b) The cost of work provided for in this section, including delivery of water to Mexico, shall be nonreimbursable; except to the extent that the waters furnished are used in the United States. (Pub. L. 93–320, title I, § 103, June 24, 1974, 88 Stat. 269.)

§ 1574. Modification of projects.

The Secretary is authorized to provide for modifications of the projects authorized by this subchapter to the extent he determines appropriate for purposes of meeting the international settlement objective of this subchapter at the lowest overall cost to the United States. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to the appropriate committees of the Congress, unless the Congress approves an earlier date by concurrent resolution. The Secretary shall notify the Governors of the Colorado River Basin States of such modifications. (Pub. L. 93–320, title I, § 104, June 24, 1974, 88 Stat. 270.)

§ 1575. Contract authority.

The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this subchapter in advance of the appropriation of funds therefor. (Pub. L. 93–320, title I, § 105, June 24, 1975, 88 Stat. 270.)

§ 1576. Interagency cooperation.

In carrying out the provisions of this subchapter, the Secretary shall consult and cooperate with the Secretary of State, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and other affected Federal, State, and local agencies. (Pub. L. 93–320, title I, § 106, June 24, 1974, 88 Stat. 270.)

§ 1577. Existing Federal laws not modified.

Nothing in this chapter shall be deemed to modify the National Environmental Policy Act of 1969, the Federal Water Pollution Control Act, as amended, or, except as expressly stated herein, the provisions of any other Federal law. (Pub. L. 93–320, title I, § 107, June 24, 1974, 88 Stat. 270.)

§ 1578. Authorization of appropriations.

There is hereby authorized to be appropriated the sum of $121,500,000 for the construction of the works and accomplishment of the purposes authorized in sections 1571 and 1572 of this title, and $34,000,000 to accomplish the purposes of section 1573 of this title, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs involved therein, and such sums as may be required to operate and maintain such works and to provide for such modifications as may be made pursuant to section 1574 of this title. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (Pub. L. 93–320, title I, § 108, June 24, 1974, 88 Stat. 270.)

SUBCHAPTER II.—MEASURES UPSTREAM FROM IMPERIAL DAM

§ 1591. Implementation of salinity control policy.

(a) The Secretary of the Interior shall implement the salinity control policy adopted for the Colorado River in the "Conclusions and Recommendations" published in the Proceedings of the Reconvened Seventh Session of the Conference in the Matter of Pollution of the Interstate Waters of the Colorado River and Its Tributaries in the States of California, Colorado, Utah, Arizona, Nevada, New Mexico, and Wyoming, held in Denver, Colorado, on April 26–27, 1972, under the authority of section 1160 of Title 33, and approved by the Administrator of the Environmental Protection Agency on June 9, 1972.

(b) The Secretary is hereby directed to expedite the investigation, planning, and implementation of the salinity control program generally as described in chapter VI of the Secretary's report entitled, "Colorado River Water Quality Improvement Program, February 1972".

(c) In conformity with subsection (a) of this section and the authority of the Environmental Protection Agency under Federal laws, the Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Agriculture are directed to cooperate and coordinate their activities effectively to carry out the objective of this subchapter. (Pub. L. 93–320, title II, § 201, June 24, 1974, 88 Stat. 270.)

§1592. Authorization to construct, operate, and maintain salinity control units.

The Secretary is authorized to construct, operate, and maintain the following salinity control units as the initial stage of the Colorado River Basin salinity control program.

(1) The Paradox Valley unit, Montrose County, Colorado, consisting of facilities for collection and disposition of saline ground water of Paradox Valley, including wells, pumps, pipelines, solar evaporation ponds, and all necessary appurtenant and associated works such as roads, fences, dikes, power transmission facilities, and permanent operating facilities.

(2) The Grand Valley unit, Colorado, consisting of measures and all necessary appurtenant and as-

sociated works to reduce the seepage of irrigation water from the irrigated lands of Grand Valley into the ground water and thence into the Colorado River. Measures shall include lining of canals and laterals and the combining of existing canals and laterals into fewer and more efficient facilities. Prior to initiation of construction of the Grand Valley unit the Secretary shall enter into contracts through which the agencies owning, operating, and maintaining the water distribution systems in Grand Valley, singly or in concert, will assume all obligations relating to the continued operation and maintenance of the unit's facilities to the end that the maximum reduction of salinity inflow to the Colorado River will be achieved. The Secretary is also authorized to provide, as an element of the Grand Valley unit, for a technical staff to provide information and assistance to water users on means and measures for limiting excess water applications to irrigated lands: *Provided,* That such assistance shall not exceed a period of five years after funds first become available under this subchapter. The Secretary will enter into agreements with the Secretary of Agriculture to develop a unified control plan for the Grand Valley unit. The Secretary of Agriculture is directed to cooperate in the planning and construction of on-farm system measures under programs available to that Department.

(3) The Crystal Geyser unit, Utah, consisting of facilities for collection and disposition of saline geyser discharges; including dikes, pipelines, solar evaporation ponds, and all necessary appurtenant works including operating facilities.

(4) The Las Vegas Wash unit, Nevada, consisting of facilities for collection and disposition of saline ground water of Las Vegas Wash, including infiltration galleries, pumps, desalter, pipelines, solar evaporation facilities, and all appurtenant works including but not limited to roads, fences, power transmission facilities, and operating facilities. (Pub. L. 93–320, title II, § 202, June 24, 1974, 88 Stat. 271.)

§ 1593. Planning reports; research and demonstration projects.

(a) The Secretary is authorized and directed to—

(1) Expedite completion of the planning reports on the following units, described in the Secretary's report, "Colorado River Water Quality Improvement Program, February 1972";

(i) Irrigation source control:
Lower Gunnison
Uintah Basin
Colorado River Indian Reservation
Palo Verde Irrigation District

(ii) Point source control:
LaVerkin Springs
Littlefield Springs
Glenwood-Dotsero Springs

(iii) Diffuse source control:
Price River
San Rafael River
Dirty Devil River
McElmo Creek
Big Sandy River

(2) Submit each planning report on the units named in paragraph (1) of this subsection promptly to the Colorado River Basin States and to such other parties as the Secretary deems appropriate for their review and comments. After receipt of comments on a unit and careful consideration thereof, the Secretary shall submit each final report with his recommendations, simultaneously, to the President, other concerned Federal departments and agencies, the Congress, and the Colorado River Basin States.

(b) The Secretary is directed—

(1) in the investigation, planning, construction, and implementation of any salinity control unit involving control of salinity from irrigation sources, to cooperate with the Secretary of Agriculture in carrying out research and demonstration projects and in implementing on-the-farm improvements and farm management practices and programs which will further the objective of this subchapter;

(2) to undertake research on additional methods for accomplishing the objective of this subchapter, utilizing to the fullest extent practicable the capabilities and resources of other Federal departments and agencies, interstate institutions, States, and private organizations.

(Pub. L. 93–320, title II, § 203, June 24, 1974, 88 Stat. 271.)

§ 1594. Colorado River Basin Salinity Control Advisory Council.

(a) There is hereby created the Colorado River Basin Salinity Control Advisory Council composed of no more than three members from each State appointed by the Governor of each of the Colorado River Basin States.

(b) The Council shall be advisory only and shall—

(1) act as liaison between both the Secretaries of Interior and Agriculture and the Administrator of the Environmental Protection Agency and the States in accomplishing the purposes of this subchapter;

(2) receive reports from the Secretary on the progress of the salinity control program and review and comment on said reports; and

(3) recommend to both the Secretary and the Administrator of the Environmental Protection Agency appropriate studies of further projects, techniques, or methods for accomplishing the purposes of this subchapter.

(Pub.L. 93–320, title II, § 204, June 24, 1974, 88 Stat. 272.)

§ 1595. Allocation, payment, and repayment of costs; adjustment of electrical energy rates.

(a) The Secretary shall allocate the total costs of each unit or separable feature thereof authorized by section 1592 of this title, as follows:

(1) In recognition of Federal responsibility for the Colorado River as an interstate stream and for international comity with Mexico, Federal ownership of the lands of the Colorado River Basin from which most of the dissolved salts originate, and the

policy embodied in the Federal Water Pollution Control Act Amendments of 1972, 75 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof shall be nonreimbursable.

(2) Twenty-five per centum of the total costs shall be allocated between the Upper Colorado River Basin Fund established by section 620d(a) of this title and the Lower Colorado River Basin Development Fund established by section 1543(a) of this title, after consultation with the Advisory Council created in section 1594(a) of this title and consideration of the following items:

(i) benefits to be derived in each basin from the use of water of improved quality and the use of works for improved water management;

(ii) causes of salinity; and

(iii) availability of revenues in the Lower Colorado River Basin Development Fund and increased revenues to the Upper Colorado River Basin Fund made available under section 620d(d)(5) of this title: *Provided*, That costs allocated to the Upper Colorado River Basin Fund under this paragraph shall not exceed 15 per centum of the costs allocated to the Upper Colorado River Basin Fund and the Lower Colorado River Basin Development Fund.

(3) Costs of construction of each unit or separable feature thereof allocated to the upper basin and to the lower basin under paragraph (2) of this subsection shall be repaid within a fifty-year period without interest from the date such unit or separable feature thereof is determined by the Secretary to be in operation.

(b) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof allocated for repayment by the lower basin under subsection (a)(2) of this section shall be paid in accordance with section 1543(g)(2) of this title, from the Lower Colorado River Basin Development Fund.

(c) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof allocated for repayment by the upper basin under subsection (a)(2) of this section shall be paid in accordance with section 620d(d)(5) of this title from the Upper Colorado River Basin Fund within the limit of the funds made available under subsection (d) of this section.

(d) The Secretary is authorized to make upward adjustments in rates charged for electrical energy under all contracts administered by the Secretary under the Colorado River Storage Project Act as soon as practicable and to the extent necessary to cover the costs of construction, operation, maintenance, and replacement of units allocated under subsection (a)(2) of this section and in conformity with subsection (a)(3) of this section: *Provided*, That revenues derived from said rate adjustments shall be available solely for the construction, operation, maintenance, and replacement of salinity control units in the Colorado River Basin herein authorized. (Pub. L. 93–320, title II, § 205 (a), (b)(1), (c), (e), June 24, 1974, 88 Stat. 272–274.)

§ 1596. Biennial report to President, Congress, and Advisory Council.

Commencing on January 1, 1975, and every two years thereafter, the Secretary shall submit, simultaneously, to the President, the Congress, and the Advisory Council created in section 1594(a) of this title, a report on the Colorado River salinity control program authorized by this subchapter covering the progress of investigations, planning, and construction of salinity control units for the previous fiscal year, the effectiveness of such units, anticipated work needed to be accomplished in the future to meet the objectives of this subchapter, with emphasis on the needs during the five years immediately following the date of each report, and any special problems that may be impeding progress in attaining an effective salinity control program. Said report may be included in the biennial report on the quality of water of the Colorado River Basin prepared by the Secretary pursuant to section 620n of this title, section 615ww of this title, and section 616e of this title. (Pub. L. 93–320, title II, § 206, June 24, 1974, 88 Stat. 274.)

§ 1597. Construction of provisions of subchapter.

Except as provided in sections 620d(d)(5), 1543(g)(2), and 1595(b) of this title, with respect to the Colorado River Basin Project Act and the Colorado River Storage Project Act, respectively, nothing in this subchapter shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994; 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California and others (376 U.S. 340), the Boulder Canyon Project Act, Boulder Canyon Project Adjustment Act, section 620m of this title, the Colorado River Basin Project Act, section 616e of this title, section 615ww of this title, the National Environmental Policy Act of 1969, and the Federal Water Pollution Control Act, as amended. (Pub. L. 93–320, title I, § 207, June 24, 1974, 88 Stat. 274.)

§ 1598. Modification of projects; contract authority; authorization of appropriations.

(a) The Secretary is authorized to provide for modifications of the projects authorized by this subchapter as determined to be appropriate for purposes of meeting the objective of this subchapter. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to appropriate committees of the Congress, and not then if disapproved by said committees, except that funds may be expended prior to the expiration of such sixty days in any case in which the Congress approves an earlier date by concurrent resolution. The Governors of the Colorado River Basin States shall

be notified of these changes.

(b) The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this subchapter, in advance of the appropriation of funds therefor. There is hereby authorized to be appropriated the sum of $125,100,000 for the construction of the works and for other purposes authorized in section 1592 of this title, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in costs involved therein, and such sums as may be required to operate and maintain such works. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (Pub. L. 93–320, title II, § 208, June 24, 1974, 88 Stat. 274.)

§ 1599. Definitions.

As used in this subchapter—

(a) all terms that are defined in the Colorado River Compact shall have the meanings therein defined;

(b) "Colorado River Basin States" means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

(Pub. L. 93–320, title II, § 209, June 24, 1974, 88 Stat. 275.)

6. Conservation Facilities at Water Resource Projects of the Corps of Engineers

16 U.S.C. 460d

§ 460d. Construction and operation of public parks and recreational facilities in water resource development projects; lease of lands; preference for use; limitations; disposition of receipts.

The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities at water resource development projects under the control of the Department of the Army, to permit the construction of such facilities by local interests (particularly those to be operated and maintained by such interests), and to permit the maintenance and operation of such facilities by local interests. The Secretary of the Army is also authorized to grant leases of lands, including structures or facilities thereon, at water resource development projects for such periods, and upon such terms and for such purposes as he may deem reasonable in the public interest: *Provided*, That leases to nonprofit organizations for park or recreational purposes may be granted at reduced or nominal considerations in recognition of the public service to be rendered in utilizing the leased premises: *Provided further*, That preference shall be given to Federal, State, or local governmental agencies, and licenses or leases where appropriate, may be granted without monetary considerations, to such agencies for the use of all or any portion of a project area for any public purpose, when the Secretary of the Army determines such action to be in the public interest, and for such periods of time and upon such conditions as he may find advisable: *And provided further*, That in any such lease or license to a Federal, State, or local governmental agency which involves lands to be utilized for the development and conservation of fish and wildlife, forests, and other natural resources, the licensee or lessee may be authorized to cut timber and harvest crops as may be necessary to further such beneficial uses and to collect and utilize the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Any balance of proceeds not so utilized shall be paid to the United States at such time or times as the Secretary of the Army may determine appropriate. The water areas of all such projects shall be open to public use generally for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary, including but not limited to prohibitions of dumping and unauthorized disposal in any manner of refuse, garbage, rubbish, trash, debris, or litter of any kind at such water resource development projects, either into the waters of such projects or onto any land federally owned and administered by the Chief of Engineers. Any violation of such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both. Any persons charged with the violation of such rules and regulations may be tried and sentenced in accordance with the provisions of section 3401 of Title 18. All persons designated by the Chief of Engineers for that purpose shall have the authority to issue a citation for violation of the regulations adopted by the Secretary of the Army, requiring the appearance of any person charged with violation to appear before the United States magistrate, within whose jurisdiction the water resource development project is located, for trial; and upon sworn information of any competent person any United States magistrate in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process of any person taken in the act of violating said regulations. No use of any

area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received by the United States for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts. (Dec. 22, 1944, ch. 665, § 4, 58 Stat. 889; July 24, 1946, ch. 596, § 4, 60 Stat. 642; Sept. 3, 1954, ch. 1264, title II, § 209, 68 Stat. 1266; Oct. 23, 1962, Pub. L. 87–874, title II, § 207, 76 Stat. 1195; Sept. 3, 1964, Pub. L. 88–578, § 2(a), 78 Stat. 899; Dec. 31, 1970, Pub. L. 91–611, title II, § 234, 84 Stat. 1833.)

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1970—Pub. L. 91–611 provided that the rules and regulations should include but not be limited to prohibitions of dumping and unauthorized disposal of refuse, garbage, rubbish, trash, debris, or litter of any kind at water resource development projects, prescribed penalty for violation of the rules and regulations, provided for trial and sentence in accordance with section 3401 of Title 18, authorized issuance of citation for violation of the regulations, provided for issuance of process for arrest of any violators, and recognized the authority of Federal officer without process of arrest any person taken in act of violating the regulations.

1964—Pub. L. 88–578 deleted ", without charge," following "The water areas of all such projects shall be open to public use generally".

1962—Pub. L. 87–874 substituted references to water resource development projects for references to reservoir areas wherever appearing, and authorized the Chief of Engineers to permit the construction, maintenance, and operation of facilities by local interests.

1954—Act Sept. 3, 1954, amended section generally, and, among other changes, inserted "for park or recreational purposes" in first proviso, inserted "or leases where appropriate" in second proviso, and inserted third proviso permitting lessees and licensees to cut timber and harvest crop in certain cases and containing provisions with respect to the collection, utilization, and disposition of the proceeds from the sale of timber and crops.

1946—Act July 24, 1946, inserted first proviso dealing with leases to nonprofit organizations.

7. Control of Jellyfish

16 U.S.C. 1201–1205

(See Control of Jellyfish under title XI *Water Pollution*)

8. Control of Obnoxious Plants in Navigable Waters

33 U.S.C. 610

(See Control of Obnoxious Plants in Navigable Waters under title XI *Water Pollution*)

9. Control of Starfish

16 U.S.C. 1211–1213

(See Control of Starfish under title XI *Water Pollution*)

10. Estuarine Areas

16 U.S.C. 1221–1226

Sec.

§ 1221. Congressional declaration of policy.

Congress finds and declares that many estuaries in the United States are rich in a variety of natural, commercial, and other resources, including environmental natural beauty, and are of immediate and

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potential value to the present and future generations of Americans. It is therefore the purpose of this chapter to provide a means for considering the need to protect, conserve, and restore these estuaries in a manner that adequately and reasonably maintains a balance between the national need for such protection in the interest of conserving the natural resources and natural beauty of the Nation and the need to develop these estuaries to further the growth and development of the Nation. In connection with the exercise of jurisdiction over the estuaries of the Nation and in consequence of the benefits resulting to the public, it is declared to be the policy of Congress to recognize, preserve, and protect the responsibilities of the States in protecting, conserving, and restoring the estuaries in the United States. (Pub. L. 90–454, § 1, Aug. 3, 1968, 82 Stat. 625.)

§ 1222. General study and inventory of estuaries and their natural resources.

(a) Estuaries included; considerations; other applicable studies.

The Secretary of the Interior, in consultation and in cooperation with the States, the Secretary of the Army, and other Federal agencies, shall conduct directly or by contract a study and inventory of the Nation's estuaries, including without limitation coastal marshlands, bays, sounds, seaward areas, lagoons, and land and waters of the Great Lakes. For the purpose of this study, the Secretary shall consider, among other matters, (1) their wildlife and recreational potential, their ecology, their value to the marine, anadromous, and shell fisheries and their esthetic value, (2) their importance to navigation, their value for flood, hurricane, and erosion control, their mineral value, and the value of submerged lands underlying the waters of the estuaries, and (3) the value of such areas for more intensive development for economic use as part of urban developments and for commercial and industrial developments. This study and inventory shall be carried out in conjunction with the comprehensive estuarine pollution study authorized by section 466c (g) of Title 33 and other applicable studies.

(b) Federal or State land acquisition or administration; other protective methods.

The study shall focus attention on whether any land or water area within an estuary and the Great Lakes should be acquired or administered by the Secretary or by a State or local subdivision thereof, or whether such land or water area may be protected adequately through local, State, or Federal laws or other methods without Federal land acquisition or administration.

(c) Report to Congress; recommendations; authorization for acquisition of lands; consultation with States and Federal agencies; accompanying statement of views, probable effects, and major trends.

The Secretary of the Interior shall, not later than January 30, 1970, submit to the Congress through the President a report of the study conducted pursuant to this section, together with any legislative recommendations, including recommendations on the feasibility and desirability of establishing a nationwide system of estuarine areas, the terms, conditions, and authorities to govern such system, and the designation and acquisition of any specific estuarine areas of national significance which he believes should be acquired by the United States. No lands within such area may be acquired until authorized by subsequent Act of Congress. Recommendations made by the Secretary for the acquisition of any estuarine area shall be developed in consultation with the States, municipalities, and other interested Federal agencies. Each such recommendation shall be accompanied by (1) expressions of any views which the interested States, municipalities, and other Federal agencies and river basin commissions may submit within sixty days after having been notified of the proposed recommendations, (2) a statement setting forth the probable effect of the recommended action on any comprehensive river basin plan that may have been adopted by Congress or that is serving as a guide for coordinating Federal programs in the basin wherein such area is located, (3) in the absence of such a plan, a statement indicating the probable effect of the recommended action on alternative beneficial users of the resources of the proposed estuarine area, and (4) a discussion of the major economic, social, and ecological trends occurring in such area.

(d) Authorization of appropriations.

There is authorized to be appropriated not to exceed $250,000 for fiscal year 1969 and $250,000 for fiscal year 1970 to carry out the provisions of this section. Such sums shall be available until expended. (Pub. L. 90–454, § 2, Aug. 3, 1968, 82 Stat. 626.)

§ 1223. Agreements with States and subdivisions; equitable sharing of costs; development improvements; availability of appropriations; State hunting and fishing laws applicable.

After the completion of the general study authorized by section 1222 of this title, the Secretary of the Interior, with the approval of the President, may enter into an agreement, containing such terms and conditions as are mutually acceptable, with any State or with a political subdivision or agency thereof (if the agreement with such subdivision or agency is first approved by the Governor of the State involved or by a State agency designated for that purpose) for the permanent management, development, and administration of any area, land, or interests therein within an estuary and adjacent lands which are owned or thereafter acquired by a State or by any political subdivision thereof: *Provided*, That, with the approval of the Governor of the State involved or of a State agency designated for that purpose, the Secretary may also enter into such an agreement for any particular area whenever the segment of the general study applicable to that area is completed subject to the provisions of subsections (a) and (b) of section 1222 of this title. Such agreement shall, among other things, provide that the State or a political subdivision or agency thereof and the Secretary shall share in an equitable manner in the cost of managing, administering, and developing such areas, and such development may include the construction, operation, installation, and maintenance of buildings, devices, structures, recreational facili-

ties, access roads, and other improvements, and such agreement shall be subject to the availability of appropriations. State hunting and fishing laws and regulations shall be applicable to such areas to the extent they are now or hereafter applicable. (Pub. L. 90–454, § 3, Aug. 3, 1968, 82 Stat. 627.)

§ 1224. Commercial and industrial development considerations; reports to Congress; recommendations.

In planning for the use or development of water and land resources, all Federal agencies shall give consideration to estuaries and their natural resources, and their importance for commercial and industrial developments, and all project plans and reports affecting such estuaries and resources submitted to the Congress shall contain a discussion by the Secretary of the Interior of such estuaries and such resources and the effects of the project on them and his recommendations thereon. The Secretary of the Interior shall make his recommendations within ninety days after receipt of such plans and reports. (Pub. L. 90–454, § 4, Aug. 3, 1968, 82 Stat. 627.)

§ 1225. State consideration of protection and restoration of estuaries in State comprehensive planning and proposals for financial assistance under certain Federal laws; grants: terms and conditions, prohibition against disposition of lands without approval of the Secretary.

The Secretary of the Interior shall encourage States and local subdivisions thereof to consider, in their comprehensive planning and proposals for financial assistance under the Federal Aid in Wildlife Restoration Act, as amended, the Federal Aid in Fish Restoration Act, as amended, the Land and Water Conservation Fund Act of 1965, the Commercial Fisheries Research and Development Act of 1964, and the Anadromous and Great Lakes Fisheries Conservation Act of October 30, 1965, the needs and opportunities for protecting and restoring estuaries in accordance with the purposes of this chapter. In approving grants made pursuant to said laws for the acquisition of all or part of an estuarine area by a State, the Secretary shall establish such terms and conditions as he deems desirable to insure the permanent protection of such areas, including a provision that the lands or interests therein shall not be disposed of by sale, lease, donation, or exchange without the prior approval of the Secretary. (Pub. L. 90–454, § 5, Aug. 3, 1968, 82 Stat. 627.)

§ 1226. Federal agency authority to carry out Federal project within an estuary unaffected.

Nothing in this chapter shall be construed to affect the authority of any Federal agency to carry out any Federal project heretofore or hereafter authorized within an estuary. (Pub. L. 90–454, § 6, Aug 3, 1968, 82 Stat. 628.)

11. Federal Assistance, Resource Conservation and Development Projects

7 U.S.C. 1010–1013

(See Federal Assistance, Resource Conservation and Development Projects under title IV, *Fish and Wildlife Conservation*)

12. Federal Facilities—Water Pollution Abatement

Ex. Order 11507, 35 F.R. 2573

(See Executive Order 11507 under title III *Executive Orders*)

13. Federal License of Water Resource Projects; Fishways

16 U.S.C. 791a, 803, 811

Sec.
791a. Short title.
* * * * *
803. Conditions of license generally.
(a) Modification of plans, etc., to secure adaptability of project.
* * * * *
811. Operation of navigation facilities; rules and regulations; penalties.
* * * * *

§ 791a. Short title.

This chapter may be cited as the "Federal Power Act." (June 10, 1920, ch. 285, § 320, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 863.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 10, 1920, which is classified generally to this chapter. [sections 791a—793, 795—797, 798—818 and 820—825r of this title].

* * * * *

§ 803. Conditions of license generally.

All licenses issued under this subchapter shall be on the following conditions:

(a) Modification of plans, etc., to secure adaptability of project.

That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

* * * * *

§ 811. Operation of navigation facilities; rules and regulations; penalties.

The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of the Interior. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this chapter, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army; and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 825o of this title. (June 10, 1920, ch. 285, § 18, 41 Stat. 1073; Aug. 26, 1935, ch. 687, title II, § 209, 49 Stat. 845; 1939 Reorg. Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; June 4, 1956, ch. 351, § 2, 70 Stat. 226.)

AMENDMENTS

1956—Act June 4, 1956, substituted "secretary of the Department in which the Coast Guard is operating" for "secretary of War" in the first sentence.

1935—Act Aug. 26, 1935, added first sentence, eliminated clause which read "Such rules and regulations may include the maintenance and operation of such licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Secretary of Commerce.", and substituted section "825o" for section "819".

14. Federal Water Project Recreation Act

16 U.S.C. 460l–12 through 460l–21

Sec.

§ 460*l*–12. Recreation and fish and wildlife benefits of Federal multiple-purpose water resources projects; declaration of policy.

It is the policy of the Congress and the intent of this Act (a) in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multiple-purpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement and that, wherever any such project can reasonably serve either or both of these purposes consistently with the provisions of this Act, it shall be constructed, operated, and maintained accordingly; (b) planning with respect to the development of the recreation potential of any such project shall be based on the coordination of the recreational use of the project area with the use of existing and planned Federal, State, or local public recreation developments; and (c) project construction agencies shall encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes and operate, maintain, and replace facilities provided for those purposes unless such areas or facilities are included or proposed for inclusion within a national recreation area, or are appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife. (Pub. L. 89–72, § 1, July 9, 1965, 79 Stat. 213.)

§ 460*l*–13. Non-Federal administration of project land and water areas; costs; compliance prerequisite to determination of economic benefits, allocation of costs, and Federal bearing of costs; execution of agreement before commencement of project construction; non-Federal share of costs.

(a) If, before authorization of a project, non-Federal public bodies indicate their intent in writing to agree to administer project land and water areas for recreation or fish and wildlife enhancement or for both of these purposes pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and to bear not less than one-half the separable costs of the project allocated to recreation, and to bear one-quarter of such costs allocated to fish and wildlife enhancement and all the costs of operation, maintenance, and replacement incurred therefor—

(1) the benefits of the project to said purpose or purposes shall be taken into account in determining the economic benefits of the project;

(2) costs shall be allocated to said purpose or purposes and to other purposes in a manner which will insure that all project purposes share equitably in the advantages of multiple-purpose construction: *Provided*, That the costs allocated to recreation or fish and wildlife enhancement shall not exceed the lesser of the benefits from those functions or the costs of providing recreation or fish and wildlife enhancement benefits or reasonably equivalent use and location by the least costly alternative means; and

(3) not more than one-half the separable costs of the project allocated to recreation and exactly three-quarters of such costs allocated to fish and wildlife enhancement and all the joint costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by the United States and be nonreimbursable.

Projects authorized during the calendar year 1965 may include recreation and fish and wildlife enhancement on the foregoing basis without the required indication of intent. Execution of an agreement as aforesaid shall be a prerequisite to commencement of construction of any project to which this subsection is applicable.

(b) The non-Federal share of the separable costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by non-Federal interests, under either or both of the following methods as may be determined appropriate by the head of the Federal agency having jurisdiction over the project: (1) payment, or provision of lands, interests therein, or facilities for the project; or (2) repayment, with interest at a rate comparable to that for other interest-bearing functions of Federal water resource projects, within fifty years of first use of project recreation or fish and wildlife enhancement facilities: *Provided*, That the source of repayment may be limited to entrance and user fees or charges collected at the project by non-Federal interests if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment as aforesaid and are made subject to review and renegotiation at intervals of not more than five years. (Pub. L. 89–72, § 2, July 9, 1965, 79 Stat. 214.)

§ 460*l*–14. Facilities of project modifications to be provided without written indication of intent.

(a) Other project purposes as justification; public health and safety requirement of minimum facilities at access points; basis for calculation of benefits; nonreimbursable costs.

No facilities or project modifications which will furnish recreation or fish and wildlife enhancement benefits shall be provided in the absence of the indication of intent with respect thereto specified in section 460*l*–13(a) of this title unless (1) such facilities or modifications serve other project purposes and are justified thereby without regard to such incidental recreation or fish and wildlife enhancement benefits as they may have or (2) they are minimum facilities which are required for the public health and safety and are located at access points provided by roads existing at the time of project construction or constructed for the administration and management of the project. Calculation of the recreation and fish and wildlife enhancement benefits in any such case shall be based on the number of visitor-days anticipated in the absence of recreation and fish and wildlife enhancement facilities or modifications except as hereinbefore provided and on the

value per visitor-day of the project without such facilities or modifications. Project costs allocated to recreation and fish and wildlife enhancement on this basis shall be nonreimbursable.

(b) Preservation of recreation and fish and wildlife enhancement potential; execution of agreements within ten year period; disposition of lands in absence of such agreements, prohibition against uses conflicting with project purposes, and preference to uses promoting and not detracting from such potential.

Notwithstanding the absence of an indication of intent as specified in section 460*l*–13(a) of this title, lands may be provided in connection with project construction to preserve the recreation and fish and wildlife enhancement potential of the project:

(1) If non-Federal public bodies execute an agreement within ten years after initial operation of the project (which agreement shall provide that the non-Federal public bodies will administer project land and water areas for recreation or fish and wildlife enhancement or both pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and will bear not less than one-half the costs of lands, facilities, and project modifications provided for recreation, and will bear one-quarter of such costs for fish and wildlife enhancement, and all costs of operation, maintenance, and replacement attributable thereto) the remainder of the costs of lands, facilities, and project modifications provided pursuant to this paragraph shall be nonreimbursable. Such agreement and subsequent development, however, shall not be the basis for any reallocation of joint costs of the project to recreation or fish and wildlife enhancement.

(2) If, within ten years after initial operation of the project, there is not an executed agreement as specified in paragraph (1) of this subsection, the head of the agency having jurisdiction over the project may utilize the lands for any lawful purpose within the jurisdiction of his agency, or may offer the land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value as approved by the head of the agency at the time of offer or, if a firm agreement by said owner or his immediate heirs is not executed within ninety days of the date of the offer, may tranfer custody of the lands to another Federal agency for use for any lawful purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal public body, or may transfer the lands to the Administrator of General Services for disposition in accordance with the surplus property laws of the United States. In no case shall the lands be used or made available for use for any purpose in conflict with the purposes for which the project was constructed, and in every case except that of an offer to purchase made, as hereinbefore provided, by the prior owner or his heirs preference shall be given to uses which will preserve and promote the recreation and fish and wildlife enhancement potential of the project or, in the absence thereof, will not detract from that potential.

(As amended Pub. L. 93–251, title I, § 77(a)(3), Mar. 7, 1974, 88 Stat. 33.)

AMENDMENTS

1974—Subsec. (b)(7). Pub. L. 93–251 substituted "modifications provided for recreation, and will bear one-quarter of such costs for fish and wildlife enhancement" for "modifications provided for either or both of those purposes, as the case may be".

§ 460*l*–15. Lease of facilities and lands to non-Federal public bodies.

At projects, the construction of which has commenced or been completed as of July 9, 1965, where non-Federal public bodies agree to administer project land and water areas for recreation and fish and wildlife enhancement purposes and to bear the costs of operation, maintenance, and replacement of existing facilities serving those purposes, such facilities and appropriate project lands may be leased to non-Federal public bodies. (Pub. L. 89–72, § 4, July 9, 1965, 79 Stat. 215.)

§ 460*l*–16. Postauthorization development of projects without allocation or reallocation of costs.

Nothing herein shall be construed as preventing or discouraging postauthorization development of any project for recreation or fish and wildlife enhancement or both by non-Federal public bodies pursuant to agreement with the head of the Federal agency having jurisdiction over the project. Such development shall not be the basis for any allocation or reallocation of project costs to recreation or fish and wildlife enhancement. (Pub. L. 89–72, § 5, July 9, 1965, 79 Stat. 216.)

§ 460*l*–17. Miscellaneous provisions.

(a) Project reports; outdoor recreation views; conformity to State comprehensive plan.

The views of the Secretary of the Interior developed in accordance with section 460*l*–2 of this title, with respect to the outdoor recreation aspects shall be set forth in any report of any project or appropriate unit thereof within the purview of this Act. Such views shall include a report on the extent to which the proposed recreation and fish and wildlife development conforms to and is in accord with the State comprehensive plan developed pursuant to section 460*l*–8(d) of this title.

(b) Migratory waterfowl refuges at Federal projects; expenditure limitation for acquisition of lands.

Expenditures for lands or interests in lands hereafter acquired by project construction agencies for the establishment of migratory waterfowl refuges recommended by the Secretary of the Interior at Federal water resource projects, when such lands or interests in lands would not have been acquired but for the establishment of a migratory waterfowl refuge at the project, shall not exceed $28,000,000: *Provided*, That the aforementioned expenditure limitation in this subsection shall not apply to the costs of mitigating damages to migratory waterfowl caused by such water resource project.

(c) Nonapplication to certain projects.

This Act shall not apply to the Tennessee Valley Authority, but the Authority is authorized to recognize and provide for recreational and other public

uses at any dams and reservoirs heretofore or hereafter constructed in a manner consistent with the promotion of navigation, flood control, and the generation of electrical energy, as otherwise required by law, nor to projects constructed under authority of the Small Reclamation Projects Act, as amended, or under authority of the Watershed Protection and Flood Prevention Act, as amended.

(d) Nonapplication to certain other projects.

Sections 460*l*–13, 460*l*–14, 460*l*–15, and 460*l*–16 of this title shall not apply to nonreservoir local flood control projects, beach erosion control projects, small boat harbor projects, hurricane protection projects, or to project areas or facilities authorized by law for inclusion within a national recreation area or appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife.

(e) Interpretation of "nonreimbursable".

As used in this Act, the term "nonreimbursable" shall not be construed to prohibit the imposition of entrance, admission, and other recreation user fees or charges

(f) Nonapplication of section 460*l*–9(a)(2) to nonreimbursable costs of the United States.

Section 460*l*–9(a)(2) of this title shall not apply to costs allocated to recreation and fish and wildlife enhancement which are borne by the United States as a nonreimbursable project cost pursuant to section 460*l*–13(a) or section 460*l*–14(b)(1) of this title.

(g) Deposits in the Treasury as miscellaneous receipts; deposits of revenue from conveyance of certain lands in the Land and Water Conservation Fund.

All payments and repayment by non-Federal public bodies under the provisions of this Act shall be deposited in the Treasury as miscellaneous receipts, and revenue from the conveyance by deed, lease, or otherwise, of lands under section 460*l*–14(b)(2) of this title shall be deposited in the Land and Water Conservation Fund. (Pub. L. 89–72, § 6(a), (c)—(h), July 9, 1965, 79 Stat. 216; amended Pub. L. 94–576, Oct. 21, 1976, 90 Stat. 2728.)

§ 460*l*–18. Authority of Secretary of Interior.

(a) Provision of facilities, acquisition of lands, and provision for public use and enjoyment of project lands, facilities, and water areas in coordination with other project purposes; limitation per project; execution of agreements before providing lands, facilities, and project modifications.

The Secretary is authorized, in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges, to investigate, plan, construct, operate and maintain, or otherwise provide for public outdoor recreation and fish and wildlife enchancement facilities, to acquire or otherwise make available such adjacent lands or interests therein as are necessary for public outdoor recreation or fish and wildlife use, and to provide for public use and enjoyment of project lands, facilities, and water areas in a manner coordinated with the other project purposes: *Provided*, That not more than $100,000 shall be available to carry out the provisions of this subsection at any one reservoir. Lands, facilities and project modifications for the purposes of this subsection may be provided only after an agreement in accordance with section 460*l*–14(b) of this title has been executed.

(b) Agreements with government agencies to promote development and operation of lands or facilities for recreation and fish and wildlife enhancement purposes.

The Secretary of the Interior is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas and the operation, maintenance, and replacement of facilities and to transfer project lands or facilities to Federal agencies or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

(c) Transfer of lands; consent of other Federal agencies to use of lands for recreation or fish and wildlife purposes; transfers to Secretary of Agriculture of forest lands; continuing administration of lands and waters for other project purposes; prohibition against limitation of authority under existing provisions of law.

No lands under the jurisdiction of any other Federal agency may be included for or devoted to recreation or fish and wildlife purposes under the authority of this section without the consent of the head of such agency; and the head of any such agency is authorized to transfer any such lands to the jurisdiction of the Secretary of the Interior for purposes of this section. The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a national forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become national forest lands: *Provided*, That the lands and waters within the flow lines of any reservoir or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. Nothing herein shall limit the authority of the Secretary of the Interior granted by existing provisions of law relating to recreation or fish and wildlife development in connection with water resource projects or to disposition of public lands for such purposes. (Pub. L. 89–72, § 7, July 9, 1965, 79 Stat. 216.)

§ 460*l*–19. Feasibility reports.

Effective on and after July 1, 1966, neither the

Secretary of the Interior nor any bureau nor any person acting under his authority shall engage in the preparation of any feasibility report under reclamation law with respect to any water resource project unless the preparation of such feasibility report has been specifically authorized by law, any other provision of law to the contrary notwithstanding. (Pub. L. 89–72, § 8, July 9, 1965, 79 Stat. 217.)

§ 460*l*–20. Construction of projects under certain laws with allocations to recreation and fish and wildlife enhancement exceeding allocations to other functions unauthoried; exception.

Nothing contained in this Act shall be taken to authorize or to sanction the construction under the Federal reclamation laws or under any Rivers and Harbors or Flood Control Act of any project in which the sum of the allocations to recreation and fish and wildlife enhancement exceeds the sum of the allocations to irrigation, hydroelectric power, municipal, domestic and industrial water supply, navigation, and flood control, except that this section shall not apply to any such project for the enhancement of anadromous fisheries, shrimp, or for the conservation of migratory birds protected by treaty, when each of the other functions of such a project has, of itself, a favorable benefit-cost ratio. (Pub. L. 89–72, § 9, July 9, 1965, 79 Stat. 217.)

§ 460*l*–21. Definitions.

As used in this Act:

(a) The term "project" shall mean a project or any appropriate unit thereof.

(b) The term "separable costs," as applied to any project purpose, means the difference between the capital cost of the entire multiple-purpose project and the capital cost of the project with the purpose omitted.

(c) The term "joint costs" means the difference between the capital cost of the entire multiple-purpose project and the sum of the separable costs for all project purposes.

(d) The term "feasibility report" shall mean any report of the scope required by the Congress when formally considering authorization of the project of which the report treats.

(e) The term "capital cost" includes interest during construction, wherever appropriate. (Pub. L. 89–72, § 10, July 9, 1965, 79 Stat. 218.)

15. Fish and Wildlife Conservation at Small Watershed Projects

16 U.S.C. 1001–1009

(See Fish and Wildlife Conservation at Small Watershed Projects under title V *Fish and Wildlife Conservation*)

16. International Boundary and Water Commission

22 U.S.C. 277–277d–5

§ 277. International Boundary Commission, United States and Mexico; study of boundary waters.

The President is authorized to designate the American Commissioner on the International Boundary Commission, United States and Mexico, or other Federal agency, to cooperate with a representative or representatives of the Government of Mexico in a study regarding the equitable use of the waters of the lower Rio Grande and the lower Colorado and Tia Juana Rivers, for the purpose of obtaining information which may be used as a basis for the negotiation of a treaty with the Government of Mexico relative to the use of the waters of these rivers and to matters closely related thereto. On completion of such study the results shall be reported to the Secretary of State. (May 13, 1924, ch. 153, § 1, 43 Stat. 118; Aug. 19, 1935, ch. 561, 49 Stat. 660.)

AMENDMENTS

1935—Act Aug. 19, 1935, created the International Boundary Commission to take the place of the three special commissioners.

REPEALS

Act Mar. 3, 1927, ch. 381, § 1, 44 Stat. 1403, formerly cited in the credit of this section, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 647.

REDESIGNATION OF COMMISSION

The International Boundary Commission was reconstituted as the International Boundary and Water Commission by the Water Treaty of 1944.

Act June 30, 1932, ch. 314, § 510, 47 Stat. 417, effective July 1, 1932, abolished the International Water Commission, United States and Mexico, American Section, and transferred its powers, duties, and functions to the International Boundary Commission, United States and Mexico, American Section.

ANNUAL APPROPRIATIONS

Annual appropriations were contained in the following Department of State Appropriation Acts:

1970—Pub. L. 91–472, title I, § 101, Oct. 21, 1970, 84 Stat. 1042.

1969—Pub. L. 91–153, title I, § 101, Dec. 24, 1969, 83 Stat. 405.

1968—Pub. L. 90–470, title I, § 101, Aug. 9, 1968, 82 Stat. 670.

1967—Pub. L. 90–133, title I, § 101, Nov. 8, 1967, 81 Stat. 413.

1966—Pub. L. 89–797, title I, § 101, Nov. 8, 1966, 80 Stat. 1481.

1965—Sept. 2, 1965, Pub. L. 89–164, title I, § 101, 79 Stat. 622.

1964—Aug. 31, 1964, Pub. L. 88–527, title I, § 101, 78 Stat. 713.

1963—Dec. 30, 1963, Pub. L. 88–245, title I, § 101, 77 Stat. 778.

1962—Oct. 18, 1962, Pub. L. 87–843, title I, § 101, 76 Stat. 1082.

1961—Sept. 21, 1961, Pub. L. 87–264, title I, § 101, 75 Stat. 547.

1960—Aug. 31, 1960, Pub. L. 86–678, title I, § 101, 74 Stat. 558.

1959—July 13, 1959, Pub. L. 86–84, title I, § 101, 73 Stat. 184.
1953—June 30, 1958, Pub. L. 85–474, title I, § 101, 72 Stat. 247.
1957—June 11, 1957, Pub. L. 85–49, title I, § 101, 71 Stat. 57.
1956—June 20, 1956, ch. 414, title I, § 101, 70 Stat. 301.
1955—July 7, 1955, ch. 379, title I, § 101, 69 Stat. 266.
1954—July 2, 1954, ch. 456, title I, § 101, 68 Stat. 415.
1953—Aug. 5, 1953, ch. 328, title I, § 101, 67 Stat. 368.
1952—July 10, 1952, ch. 651, title I, § 101, 66 Stat. 551.
1951—Oct. 22, 1951, ch. 533, title I, § 101, 65 Stat. 577.
1950—Sept. 6, 1950, ch. 896, ch. III, title I, § 101, 64 Stat. 610.
1949—July 20, 1949, ch. 354, title I, § 101, 63 Stat. 451.
1948—June 3, 1948, ch. 400, title I, § 101, 62 Stat. 310.
1947—July 9, 1947, ch. 211, title I, § 101, 61 Stat. 284.
1946—July 5, 1946, ch. 541, title I, 60 Stat. 454.
1945—May 21, 1945, ch. 129, title I, 59 Stat. 175.
1944—June 28, 1944, ch. 294, title I, 58 Stat. 403.
1943—July 1, 1943, ch. 182, title I, 57 Stat. 278.
1942—July 2, 1942, ch. 472, title I, 56 Stat. 475.
1941—June 28, 1941, ch. 258, title I, 55 Stat. 273.
1940—May 14, 1940, ch. 189, title I, 54 Stat. 189.
1939—June 29, 1939, ch. 248, title I, 53 Stat. 893.
1938—Apr. 27, 1938, ch. 180, title I, 52 Stat. 255.
1937—June 16, 1937, ch. 359, title I, 50 Stat. 268.
1936—May 15, 1936, ch. 405, title I, 49 Stat. 1317.
1935—Mar. 22, 1935, ch. 39, title I, 49 Stat. 74.
1934—Apr. 7, 1934, ch. 104, title I, 48 Stat. 534.
1933—Mar. 1, 1933, ch. 144, title I, 47 Stat. 1376.
1932—July 1, 1932, ch. 361, title I, 47 Stat. 480.
1931—Feb. 23, 1931, ch. 280, title I, 46 Stat. 1309.
1930—Apr. 18, 1930, ch. 184, title I, 46 Stat. 173.
1929—Jan. 25, 1929, ch. 102, title I, 45 Stat. 1094.
1928—Feb. 15, 1928, ch. 57, title I, 45 Stat. 64.
1927—Feb. 24, 1927, ch. 187, title I, 44 Stat. 1179.
1926—Apr. 29, 1926, ch. 195, title I, 44 Stat. 330.
1925—Feb. 27, 1925, ch. 364, title I, 43 Stat. 1014.
1924—May 28, 1924, ch. 204, title I, 43 Stat. 205.

§ 277a. Investigations of commission; construction of works or projects.

The Secretary of State, acting through the American Commissioner, International Boundary Commission, United States and Mexico, is further authorized to conduct technical and other investigations relating to the defining, demarcation, fencing, or monumentation of the land and water boundary between the United States and Mexico, to flood control, water resources, conservation, and utilization of water, sanitation and prevention of pollution, channel rectification, and stabilization and other related matters upon the international boundary between the United States and Mexico; and to construct and maintain fences, monuments and other demarcations of the boundary line between the United States and Mexico, and sewer systems, water systems, and electric light, power and gas systems crossing the international border, and to continue such work and operations through the American Commissioner as are now in progress and are authorized by law.

The President is authorized and empowered to construct, operate, and maintain on the Rio Grande River below Fort Quitman, Texas, any and all works or projects which are recommended to the President as the result of such investigations and by the President are deemed necessary and proper. (May 13, 1924, ch. 153, § 2, 43 Stat. 118; Aug. 19, 1935, ch. 561, 49 Stat. 660.)

AMENDMENTS

1935—Act Aug. 19, 1935, amended section generally.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 277c, 277d of this title.

§ 277b. Works or projects; construction under treaty with Mexico; operation, maintenance and supervision.

(a) The President is further authorized to construct any project or works which may be provided for in a treaty entered into with Mexico and to repair, protect, maintain, or complete works now existing or now under construction or those that may be constructed under the treaty provisions aforesaid; and to construct any project or works designed to facilitate compliance with the provisions of treaties between the United States and Mexico; and (b) to operate and maintain any project or works so constructed or, subject to such rules and regulations for continuing supervision by the said American Commissioner or any Federal agency as the President may cause to be promulgated, to turn over the operation and maintenance of such project or works to any Federal agency, or any State, county, municipality, district, or other political subdivision within which such project or works may be in whole or in part situated, upon such terms, conditions, and requirements as the President may deem appropriate. (May 13, 1924, ch. 153, § 3, as added Aug. 19, 1935, ch. 561, 49 Stat. 660.)

§ 277c. Agreements with political subdivisions; acquisition of lands.

In order to carry out the provisions of sections 277 to 277d of this title, the President, or any Federal agency he may designate is authorized, (a) in his discretion, to enter into agreements with any one or more of said political subdivisions, in connection with the construction of any project or works provided for in paragraph (2) of section 277a and section 277b of this title, under the terms of which agreements there shall be furnished to the United States, gratuitously, except for the examination and approval of titles, the lands or easements in lands necessary for the construction, operation, and maintenance in whole or in part of any such project or works, or for the assumption by one or more of any such political subdivisions making such agreement, of the operation and maintenance of such project or works in whole or in part upon the completion thereof: *Provided, however,* That when an agreement is reached that necessary lands or easements shall be provided by any such political subdivision and for the future operation and maintenance by it of a project or works or a part thereof, in the discretion of the President the title to such lands and easements for such projects or works need not be required to be conveyed to the United States but may be required only to be vested in and remain in such political subdivision; (b) to acquire by purchase, exercise of the power of eminent domain, or by donation, any real or personal property which may be necessary; (c) * * * *Provided,* That any such withdrawal may subsequently be revoked by the President; and (d) to make or approve all necessary rules and regulations. (May 13, 1924, ch. 153, § 4, as added Aug. 19, 1935, ch. 561, 49 Stat. 660, and amended May 22, 1936, ch. 447, 49 Stat. 1370;

Pub. L. 94–579; § 704(a), Oct. 21, 1976, 90 Stat. 2792.)

AMENDMENTS

1976—Pub. L. 94–579 repealed paragraph (c), dealing with Presidential authority to withdraw lands from public disposition, except for the proviso.

1936—Act May 22, 1936, inserted "paragraph (2) of section 277a".

§ 277d. Funds received from Mexico; expenditure.

Any moneys contributed by or received from the United Mexican States for the purpose of cooperating or assisting in carrying out the provisions of sections 277 to 277d of this title shall be available for expenditure in connection with any appropriation which may be made for the purposes of such sections. (May 13, 1924, ch. 153, § 5, as added Aug. 19, 1935, ch. 561, 49 Stat. 660.)

§ 277d–1. Authorizations for Mexican treaty projects; acquisition of lands for relocation purposes; contracts and conveyances.

The Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States and Mexico (herein referred to as the "Commission"), in connection with any project under the jurisdiction of the United States Section, International Boundary and Water Commission, United States and Mexico, is authorized: (a) to purchase, or condemn, lands, or interests in lands, for relocation of highways, roadways, railroads, telegraph, telephone, or electric transmission lines, or any other properties whatsoever, the relocation of which, in the judgment of the said Commissioner, is necessitated by the construction or operation and maintenance of any such project, and to perform any or all work involved in said relocations on said lands, or interests in lands, other lands, or interests in lands, owned and held by the United States in connection with the construction or operation and maintenance of any such project, or properties not owned by the United States; (b) to enter into contracts with the owners of the said properties whereby they undertake to acquire any, or all, property needed for said relocation, or to perform any, or all, work involved in said relocations; and (c) for the purpose of effecting completely said relocations, to convey, or exchange Government properties acquired or improved under clause (a) of this section, with or without improvements, or other properties owned and held by the United States in connection with the construction or operation and maintenance of said project, or to grant term or perpetual easements therein or thereover. Grants or conveyances hereunder shall be by instruments executed by the Secretary of State without regard to provisions of law governing the patenting of public lands. (Sept. 13, 1950, ch. 948, title I, § 101, 64 Stat. 846.)

§ 277d–2. Same; construction and maintenance of roads, highways, etc.; housing and other facilities for personnel.

The United States Commissioner is authorized to construct, equip, and operate and maintain all access roads, highways, railways, power lines, buildings, and facilities necessary in connection with any such project, and in his discretion to provide housing, subsistence, and medical and recreational facilities for the officers, agents, and employees of the United States, and/or for the contractors and their employees engaged in the construction, operation, and maintenance of any such project, and to make equitable charges therefor, or deductions from the salaries and wages due employees, or from progress payments due contractors, upon such terms and conditions as he may determine to be to the best interest of the United States, the sums of money so charged and collected or deducted to be credited to the appropriation for the project current at the time the obligations are incurred. (Sept. 13, 1950, ch. 948, title I, § 102, 64 Stat. 846.)

§ 277d–3. Same; authorization for appropriations; activities for which available; contracts for excess amounts.

There are hereby authorized to be appropriated to the Department of State for the use of the Commission, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of the Treaty of February 3, 1944, and other treaties and conventions between the United States of America and the United Mexican States, under which the United States Section operates, and to discharge the statutory functions and duties of the United States Section. Such sums shall be available for construction, operation and maintenance of stream gaging stations, and their equipment and sites therefor; personal services and rent in the District of Columbia and elsewhere; services, including those of attorneys and appraisers, in accordance with the provisions of section 55a of Title 5, at rates for individuals not in excess of $100 per diem and the United States Commissioner is authorized, notwithstanding the provisions of any other Act, to employ as consultants by contract or otherwise without regard to chapter 51 and subchapter III of chapter 53 of Title 5, and the civil-service laws and regulations, retired personnel of the Armed Forces of the United States, who shall not be required to revert to an active status; travel expense, including, in the discretion of the Commissioner, expenses of attendance at meetings of organizations concerned with the activities of the Commission which may be necessary for the efficient discharge of the responsibilities of the Commission; hire, with or without personal services, of work animals, and animal-drawn, and motor-propelled (including passenger) vehicles and aircraft and equipment; acquisition by donation, purchase, or condemnation, of real and personal property, including expenses of abstracts, certificates of title, and recording fees; purchase of ice and drinking water; inspection of equipment, supplies and materials by contract or otherwise; drilling and testing of foundations and dam sites, by contract if deemed necessary; payment for official telephone service in the field in case of official telephones installed in private houses when authorized under regulations established by the Commissioner; purchase of firearms and ammunition for guard purposes; and such other objects and purposes as may be permitted by

laws applicable, in whole or in part, to the United States Section: *Provided*, That, when appropriations have been made for the commencement or continuation of construction or operation and maintenance of any such project, the United States Commissioner, notwithstanding the provisions of section 665 of Title 31, and sections 11 and 12 of Title 41, or any other law, may enter into contracts beyond the amount actually appropriated for so much of the work on any such authorized project as the physical and orderly sequence of construction makes necessary, such contracts to be subject to and dependent upon future appropriations by Congress. (Sept. 13, 1950, ch. 948, title I, § 103, 64 Stat. 847; Aug. 19, 1964, Pub. L. 88–448, title IV, § 402(a)(29), 78 Stat. 494.)

AMENDMENTS

1964—Pub. L. 88–448 eliminated provisions which permitted retired personnel of the Armed Forces of the United States employed by the Commission to receive as compensation for temporary service, the difference between the rates of pay established therefor and their retired pay during the period or periods of their temporary employment.

§ 277d–4. Same; acquisition of properties of Imperial Irrigation District of California.

The United States Commissioner, in order to comply with the provisions of articles 12 and 23 of the treaty of February 3, 1944, between the United States and Mexico, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande below Fort Quitman, Texas, is authorized to acquire, in the name of the United States, by purchase or by proceedings in eminent domain, the physical properties owned by the Imperial Irrigation District of California, located in the vicinity of Andrade, California, consisting of the Alamo Canal in the United States, the Rockwood Intake, the Hanlon Heading, the quarry, buildings used in connection with such facilities, and appurtenant lands, and to reconstruct, operate and maintain such properties in connection with the administration of said treaty. (Sept. 13, 1950, ch. 948, title I, § 104, 64 Stat. 847.)

§ 277d–5. Same; availability of prior appropriations; restriction to projects agreed to under treaty.

Funds heretofore appropriated to the Department of State under the heading "International Boundary and Water Commission, United States and Mexico" shall be available for the purposes of sections 277d–1 to 277d–5 of this title: *Provided*, That authorizations under said sections shall apply only to projects agreed upon by the two Governments in accordance with the treaty of February 3, 1944. (Sept. 13, 1950, ch. 948, title I, § 105, 64 Stat. 848.)

17. Land and Water Conservation, Funds

16 U.S.C. 460l–4 through 460l–11

§ 460*l*–4. Land and water conservation provisions; statement of purposes.

The purposes of sections 460*l*–4 to 460*l*–11 of this title are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas. (Pub. L. 88–578, title I, § 1(b), Sept. 3, 1964, 78 Stat. 897.)

§ 460*l*–5. Land and water conservation funds; establishment; covering certain revenues and collections into fund.

During the period ending September 30, 1989, there shall be covered into the land and water conservation fund in the Treasury of the United States, which fund is hereby established and is hereinafter referred to as the "fund", the following revenues and collections:

(a) SURPLUS PROPERTY SALES.

All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 485(b)(e), title 40, United States Code, or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation Act) hereafter received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Nothing in this Act shall affect existing laws or regulations concerning disposal of real or personal surplus property to schools, hospitals, and States and their political subdivisions.

(b) MOTORBOAT FUELS TAX.

The amounts provided for in section 460L–11.

(c)(1) OTHER REVENUES.

In addition to the sum of the revenues and collections estimated by the Secretary of the Interior to be covered into the fund pursuant to this section, as amended, there are authorized to be appropriated annually to the fund out of any money in the Treasury not otherwise appropriated such amounts as are necessary to make the income of the fund not less than $300,000,000 for fiscal year 1977, $600,000,000 for fiscal year 1978, $750,000,000 for

fiscal year 1979, and $900,000,000 for fiscal year 1980 and for each fiscal year thereafter through September 30, 1989.

(2) To the extent that any such sums so appropriated are not sufficient to make the total annual income of the fund equivalent to the amounts provided in clause (1), an amount sufficient to cover the remainder thereof shall be credited to the fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) : *Provided,* That notwithstanding the provisions of section 460L–6, moneys covered into the fund under this paragraph shall remain in the fund until appropriated by the Congress to carry out the purpose of this Act. (As amended Pub. L. 91–485, § 1, Oct. 22, 1970, 84 Stat. 1084; Pub. L. 94–422, § 101(1) Sept. 28, 1976, 90 Stat. 1313.)

AMENDMENTS

1976—Pub. L. 94–422 substantially revised this section.

1970—Subsec. (c) (1). Pub. L. 91–485, § 1(a) substituted "fiscal years 1968, 1969, and 1970, and not less than $300,000,000 for each fiscal year thereafter through June 30, 1989." for "five fiscal years beginning July 1, 1968, and ending June 30, 1973".

Subsec. (c) (2). Pub. L. 91–485, § 1(b), substituted $200,000,000 or $300,000,000 for each of such fiscal years, as provided in cl. (1)," for "$200,000,000 for each of such fiscal years,".

§ 460*l*–6. Appropriations for expenditure of land and water conservation fund moneys; transfers to miscellaneous receipts of the Treasury.

Moneys covered into the fund shall be available for expenditure for the purposes of sections 460*l*–4 to 460*l*–11 of this title only when appropriated therefor. Such appropriations may be made without fiscal-year limitation. Moneys covered into this fund not subsequently authorized by the Congress for expenditures within two fiscal years following the fiscal year in which such moneys had been credited to the fund, shall be transferred to miscellaneous receipts of the Treasury. (Pub. L. 88–578, title I, § 3, Sept. 3, 1964, 78 Stat. 899.)

§ 460*l*–6a. Admission and special recreation use fees.

(a) Admission fees at designated areas; "Golden Eagle Passport" annual admission permit; issuance and use of annual admission permit; single-visit fees; fee-free travel areas; "Golden Age Passport" annual entrance permit; issuance and use of annual entrance permit.

Entrance or admission fees shall be charged only at designated units of the National Park System administered by the Department of the Interior and National Recreation Areas administered by the Department of Agriculture. No admission fees of any kind shall be charged or imposed for entrance into any other federally owned areas which are operated and maintained by a Federal agency and used for outdoor recreation purposes.

(1) For admission into any such designated area, an annual admission permit (to be known as the Golden Eagle Passport) shall be available, for a fee of not more than $10. The permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse, children, and parents accompanying him where entry to the area is by any means other than private, noncommercial vehicle, shall be entitled to general admission into any area designated pursuant to this subsection. The annual permit shall be valid during the calendar year for which the annual fee is paid. The annual permit shall not authorize any uses for which additional fees are charged pursuant to subsections (b) and (c) of this section. The annual permit shall be nontransferable and the unlawful use thereof shall be punishable in accordance with regulations established pursuant to subsection (e) of this section. The annual permit shall be available for purchase at any such designated area.

(2) Reasonable admission fees for a single visit at any designated area shall be established by the administering Secretary for persons who choose not to purchase the annual permit. A "single visit" means that length of time a visitor remains within the exterior boundary of a designated fee area beginning from the day he first enters the area until he leaves, except that on the same day such admission fee is paid, the visitor may leave and reenter without the payment of an additional admission fee to the same area.

(3) No admission fee shall be charged for travel by private, non-commercial vehicle over any national parkway or any road or highway established as a part of the National Federal Aid System, as defined in section 101 of Title 23, which is commonly used by the public as a means of travel between two places either or both of which are outside the area. Nor shall any fee be charged for travel by private, noncommercial vehicle over any road or highway to any land in which such person has any property right if such land is within any such designated area. In the Smoky Mountains National Park, unless fees are charged for entrance into said park on main highways and thoroughfares, fees shall not be charged for entrance on other routes into said park or any part thereof.

(4) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit (to be known as the "Golden Age Passport") to any citizen of, or person domiciled in, the United States sixty-two years of age or older applying for such permit. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection. No other free permits shall be issued to any person: *Provided,* That no fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of law or treaty or who are engaged in the conduct of official Federal, State, or local Government business and *Provided further,*

That for no more than three years after the date of enactment of this Act, visitors to the United States will be granted entrance, without charge, to any designated admission fee area upon presentation of a valid passport.

(b) Recreation use fees; collection; campgrounds at lakes or reservoirs under jurisdiction of Corps of Engineers; fees for Golden Age Passport permittees.

Each Federal agency developing, administering, providing or furnishing at Federal expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: *Provided,* That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, toilet facilities, picnic tables, or boat ramps: *Provided, however,* That a fee shall be charged for boat launching facilities only where specialized facilities or services such as mechanical or hydraulic boat lifts or facilities are provided: *And provided further,* That in no event shall there be a charge for the use of any campground not having the following—tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). At each lake or reservoir under the jurisdiction of the Corps of Engineers, United States Army, where camping is permitted, such agency shall provide at least one primitive campground, containing designated campsites, sanitary facilities, and vehicular access, where no charge shall be imposed. Any Golden Age Passport permittee shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

(c) Special recreation permits.

Special recreation permits for uses such as group activities, recreation events, motorized recreation vehicles, and other specialized recreation uses may be issued in accordance with procedures and at fees established by the agency involved.

(d) Criteria, posting and uniformity of fees.

All fees established pursuant to this section shall be fair and equitable, taking into consideration the direct and indirect cost to the Government, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by non-Federal public agencies, the economic and administrative feasibility of fee collection and other pertinent factors.

Clear notice that a fee has been established pursuant to this section shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas. It is the intent of sections 460*l*–4 to 460*l*–11 of this title that comparable fees should be charged by the several Federal agencies for comparable services and facilities.

(e) Rules and regulations; establishment; enforcement powers; penalty for violations.

In accordance with the provisions of this section, the heads of appropriate departments and agencies may prescribe rules and regulations for areas under their administration for the collection of any fee established pursuant to this section. Persons authorized by the heads of such Federal agencies to enforce any such rules or regulations issued under this subsection may, within areas under the administration or authority of such agency head and with or, if the offense is committed in his presence, without a warrant, arrest any person who violates such rules and regulations. Any person so arrested may be tried and sentenced by the United States magistrate specifically designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in subsections (b), (c), (d), and (e) of section 3401 of Title 18. Any violations of the rules and regulations issued under this subsection shall be punishable by a fine of not more than $100.

(f) Disposition of fees; contracts with public or private entities for visitor reservation services.

Except as otherwise provided by law or as may be required by lawful contracts entered into prior to September 3, 1964, providing that revenues collected at particular Federal areas shall be credited to specific purposes, all fees which are collected by any Federal agency shall be covered into a special account in the Treasury of the United States to be administered in conjunction with, but separate from, the revenues in the Land and Water Conservation Fund: *Provided,* That the head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services; and any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged the public for providing such services and to remit the net proceeds therefrom to the contracting agency. Revenues in the special account shall be available for appropriation, without prejudice to appropriations from other sources for the same purposes, for any authorized outdoor recreation function of the agency by which the fees were collected: *Provided, however,* That not more than forty per centum of the amount so credited may be appropriated during the five fiscal years following the enactment of this Act for the enhancement of the fee collection system established by this section, including the promotion and enforcement thereof.

(g) Federal and State Laws unaffected.

Nothing in sections 460*l*–4 to 460*l*–11 of this title shall authorize Federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, nor shall it affect any rights or authority of the States with respect to fish and wildlife, nor shall it repeal or modify any provision

of law that permits States or political subdivisions to share in the revenues from Federal lands or any provision of law that provides that any fees or charges collected at particular Federal areas shall be used for or credited to specific purposes or special funds as authorized by that provision of law.

(h) Annual reports to Congress.

Periodic reports indicating the number and location of fee collection areas, the number and location of potential fee collection areas, capacity and visitation information, the fees collected, and other pertinent data, shall be coordinated and compiled by the Bureau of Outdoor Recreation and transmitted to the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate. Such reports, which shall be transmitted no later than March 31 annually, shall include any recommendations which the Bureau may have with respect to improving this aspect of the land and water conservation fund program. (Pub. L. 88–578, title I, § 4, as added Pub. L. 92–347, § 2, July 11, 1972, 86 Stat. 459, and amended Pub. L. 93–81, §§ 1, 2, Aug. 1, 1973, 87 Stat. 178, 179; Pub. L. 93–303, § 1, June 7, 1974, 88 Stat. 192.)

AMENDMENTS

1974—Subsec. (a). Pub L. 93–303, § 1(b), inserted "which are operated and maintained by a Federal agency and" following "areas."

Subsec. (a)(1). Pub. L. 93–303, § 1(c), among other changes, substituted "The permittee" for "Any person purchasing the annual permit", inserted provisions authorizing the permittee and his spouse, children, and parents accompanying him to enter an area where entry is by any means other than private, noncommercial vehicles, changed provisions which relate to the purchase of the annual permit to allow its sale at any designated area instead of through the offices of the Secretary of the Interior and the Secretary of Agriculture, through all post offices of the first- and second-class, and at such other offices as the Postmaster General directed, and eliminated provisions which empowered the Secretary of the Interior to transfer to the Postal Service from the permit receipts such funds as are adequate to reimburse the Postal Service for the cost of the service.

Subsec. (a)(2). Pub. L. 93–303, § 1(d), eliminated "or who enter such an area by means other than by private, noncommercial vehicle" which followed "annual permit" in the first sentence. See subsec. (a)(1) of this section.

Subsec. (a)(4). Pub. L. 93–303, § 1(e), substituted "a lifetime admission permit" for "an annual entrance permit", limited the issuance of this permit to citizens of, or persons domiciled in the United States, and inserted provisions to allow the permittee and his spouse and children accompanying him to enter an area which entry is by any means other than private, noncommercial vehicle.

Subsec. (b). Pub. L. 93–303, § 1 (f), (g), among other changes, substituted "daily recreation use fee" for "special recreation use fees", authorized a fee for boat launching facilities where specialized facilities or services such as mechanical or hydraulic boat lifts or facilities are provided, required the Corps of Engineers to provide at least one primitive campground where no charge shall be imposed at each lake or reservoir under its jurisdiction, incorporated provisions formerly in subsec. (b)(1) allowing any Golden Age Passport permittee to utilize the recreation facilities at a rate of 50 per centum of the established use fee, eliminated the remainder of former subsec. (b)(1) which related to determination of daily use fees for overnight occupancy, and redesignated former subsec. (b)(2) as (c).

Subsec. (c). Pub. L. 93–303, § 1(g), redesignated former subsec. (b)(2) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 93–303, § 1 (g), (h), redesignated former subsec. (c) as (d), and substituted therein "a fee has been established pursuant to this section" for "an admission fee or special recreation use fee has been established."

Subsec. (e). Pub. L. 93–303, § 1(g), (l), redesignated former subsec. (d) as (e), and substituted therein "collection of any fee established pursuant to this section" for "collection of any entrance fee and/or special recreation use fee, as the case may be."

Subsec. (f). Pub. L. 93–303, § 1(g), (j), redesignated former subsec. (e) as (f), and inserted provisions therein empowering the head of any Federal agency to contract with any public or private entity to provide visitor reservation services.

Subsecs. (g), (h). Pub. L. 93–303, § 1(g), redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1973—Subsec. (a)(2). Pub. L. 93–81, § 2, added the definition of "single visit".

Subsec. (b). Pub. L. 93–81, § 1, added in the opening paragraph the proviso that there shall be no charge for the day use or recreational use of facilities such as picnic areas, boat ramps, where no mechanical or hydraulic equipment is provided, drinking water, wayside exhibits, roads, trails, overlook sites, visitors' centers, scenic drives and toilet facilities and that no fee be charged for access to or use of campground not having flush restrooms, showers, access and circulatory roads, sanitary disposal stations, visitor protection control, designated tent or trailer spaces, refuse containers and potable water.

§ 460*l*–7. Allocation of land and water conservation fund for State and Federal purposes.

There shall be submitted with the annual budget of the United States a comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the fund. Not less than 40 per centum of such appropriations shall be available for Federal purposes. (Pub. L. 88–578, title I, § 4, Sept. 3, 1964, 78 Stat. 900; Pub. L. 90–401, § 3, July 15, 1968, 82 Stat. 355; Pub. L. 94–422, § 101(2), Sept. 28, 1976, 90 Stat. 1314.)

AMENDMENTS

1976—Pub. L. 94–422 substantially revised this section.

1968—Subsec. (b). Pub. L. 90–401 substituted "until the end of fiscal year 1969" for "for a total of eight years" in the provision spelling out the term during which the advance appropriations are authorized from moneys in the Treasury not otherwise appropriated in amounts averaging not more than $60,000,000 for each fiscal year.

§ 460*l*–8. Financial assistance to States.

(a) Authority of Secretary of Interior; payments to carry out purposes of land and water conservation provisions.

The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to provide financial assistance to the States from moneys available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of sections 460*l*–4 to 460*l*–11 of this title, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interests in land or waters, or (3) development.

(b) Apportionment among States; finality of administrative determination; formula; notification; reapportionment of unobligated amounts; definition of State.

Sums appropriated and available for State purposes for each fiscal year shall be apportioned among the several States by the Secretary, whose determination shall be final, in accordance with the following formula:

(1) Forty per centum of the first $225,000,000; thirty per centum of the next $275,000,000; and twenty per centum of all additional appropriations shall be apportioned equally among the several States; and

(2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this Act. The determination of need shall include among other things a consideration of the proportion which the population of each State bears to the total population of the United States and of the use of outdoor recreation resources of individual States by persons from outside the State as well as a consideration of the Federal resources and programs in the particular States.

(3) The total allocation to an individual State under paragraphs (1) and (2) of this subsection shall not exceed 10 per centum of the total amount allocated to the several States in any one year.

(4) The Secretary shall notify each State of its apportionments; and the amounts thereof shall be available thereafter for payment to such State for planning, acquisiton, or development projects as hereafter prescribed. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter shall be reapportioned by the Secretary in accordance with paragraph (2) of this subsection, without regard to the 10 per centum limitation to an individual State specified in this subsection.

(5) For the purposes of paragraph (1) of this subsection, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (when such inlands achieve Commonwealth status) shall be treated collectively as one State, and shall receive shares of such apportionment in proportion to their populations. The above listed areas shall be treated as States for all other purposes of this title.

(c) Matching requirements.

Payments to any State shall cover not more than 50 per centum of the cost of planning, acquisition, or development projects that are undertaken by the State. The remaining share of the cost shall be borne by the State in a manner and with such funds or services as shall be satisfactory to the Secretary. No payment may be made to any State for or on account of any cost or obligation incurred on any service rendered prior to September 3, 1964.

(d) Comprehensive State plan; necessity; adequacy; contents; correlation with other plans; factors for formulation of Housing and Home Finance Agency financed plans; planning projects.

A comprehensive statewide outdoor recreation plan shall be required prior to the consideration by the Secretary of financial assistance for acquisition or development projects. The plan shall be adequate if, in the judgment of the Secretary, it encompasses and will promote the purposes of sections 460*l*–4 to 460*l*–11 of this title: *Provided*, That no plan shall be approved unless the Governor of the respective State certifies that ample opportunity for public participation in plan development and revision has been accorded. The Secretary shall develop, in consultation with others, criteria for public participation, which criteria shall constitute the basis for the certification by the Governor. The plan shall contain—

(1) the name of the State agency that will have authority to represent and act for the State in dealing with the Secretary for purposes of sections 460*l*–4 to 460*l*–11 of this title;

(2) an evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;

(3) a program for the implementation of the plan; and

(4) other necessary information, as may be determined by the Secretary.

The plan shall take into account relevant Federal resources and programs and shall be correlated so far as practicable with other State, regional, and local plans. Where there exists or is in preparation for any particular State a comprehensive plan financed in part with funds supplied by the Housing and Home Finance Agency, any statewide outdoor recreation plan prepared for purposes of section 460*l*–4 to 460*l*–11 of this title shall be based upon the same population, growth, and other pertinent factors as are used in formulating the Housing and Home Finance Agency financed plans.

The Secretary may provide financial assistance to any State for projects for the preparation of a comprehensive statewide outdoor recreation plan when such plan is not otherwise available or for the maintenance of such plan.

(e) Projects for land and water acquisition; development.

In addition to assistance for planning projects, the Secretary may provide financial assistance to any State for the following types of projects or combinations thereof if they are in accordance with the State comprehensive plan:

(1) For the acquisition of land, waters, or interests in land or waters (other than land, waters, or interests in land or waters acquired from the United States for less than fair market value), but not including incidental costs relating to acquisition. Whenever a State provides that the owner of a single-family residence may, at his option, elect to retain a right of use and occupancy for not less than six months from the date of acquisition of such residence and such owner elects to retain such a right, such owner shall be deemed

to have waived any benefits under sections 4623, 4624, 4625, and 4626 of Title 42 and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 4601(6) of Title 42.

(2) For development of basic outdoor recreation facilities to serve the general public, including the development of Federal lands under lease to States for terms of twenty-five years or more: *Provided,* That no assistance shall be available under section 460*l*–4 to 460*l*–11 of this title to enclose or shelter facilities normally used for outdoor recreation activities, but the Secretary may permit local funding, and after the date of enactment of this proviso not to exceed 10 per centum of the total amount allocated to a State in any one year to be used for sheltered facilities for swimming pools and ice skating rinks in areas where the Secretary determines that the severity of climatic conditions and the increased public use thereby made possible justifies the construction of such facilities.

(f) Requirements for project approval; conditions; progress payments; payments to Governors or State officials or agencies; State transfer of funds to public agencies; conversion of property to other uses; reports to Secretary; accounting; records; audit.

Payments may be made to States by the Secretary only for those planning, acquisition, or development projects that are approved by him. No payment may be made by the Secretary for or on account of any project with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any project with respect to which such assistance has been given or promised under sections 460*l*–4 to 460*l*–11 of this title. The Secretary may make payments from time to time in keeping with the rate of progress toward the satisfactory completion of individual projects: *Provided,* That the approval of all projects and all payments, or any commitments relating thereto, shall be withheld until the Secretary receives appropriate written assurance from the State that the State has the ability and intention to finance its share of the cost of the particular project, and to operate and maintain by acceptable standards, at State expense, the particular properties or facilities acquired or developed for public outdoor recreation use.

(2) Payments for all projects shall be made by the Secretary to the Governor of the State or to a State official or agency designated by the Governor or by State law having authority and responsibility to accept and to administer funds paid hereunder for approved projects. If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency.

(3) No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

(4) No payment shall be made to any State until the State has agreed to (1) provide such reports to the Secretary, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his duties under sections 460*l*–4 to 460*l*–11 of this title, and (2) provide such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State under sections 460*l*–4 to 460*l*–11 of this title.

(5) Each recipient of assistance under sections 460*l*–4 to 460*l*–11 of this title shall keep such records as the Secretary shall prescribe, including

(6) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any

(7) Each State shall evaluate its grant programs annually under guidelines set forth by the Secretary and shall transmit such evaluation to the Secretary, together with a list of all projects funded during that fiscal year, including, but not limited to, a description of each project, the amount of Federal funds employed in such project, the source of other funds, and the estimated cost of completion of the project. Such evaluation and the publication of same shall be eligible for funding on a 50–50 matching basis. The results of the evaluation shall be annually reported on a fiscal year basis to the Bureau of Outdoor Recreation, which agency shall forward a summary of such reports to the Committees on Interior and Insular Affairs of the United States Congress. Such report to the committees shall also include an analysis of the accomplishments of the fund for the period reported, and may also include recommendations as to future improvements for the operation of the Land and Water Conservation Fund program.

(8) With respect to property acquired or developed with assistance from the fund, discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

(g) Coordination with Federal agencies.

In order to assure consistency in policies and actions under sections 460*l*–4 to 460*l*–11 of this title, with other related Federal programs and activities (including those conducted pursuant to sections 1500 to 1500e of Title 42 and section 461 of Title 40) and to assure coordination of the planning, acquisition, and development assistance to States under this section with other related Federal programs

and activities, the President may issue such regulations with respect thereto as he deems desirable and such assistance may be provided only in accordance with such regulations.

(Pub. L. 88–578, title I, § 6, formerly § 5, Sept. 3, 1964, 78 Stat. 900, renumbered Pub. L. 92–347, § 2, July 11, 1972, 86 Stat. 549, and amended Pub. L. 93–303, § 2, June 7, 1974, 88 Stat. 194; Pub. L. 94–422, § 101(3), Sept. 28, 1976, 90 Stat. 1314.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–422 substantially revised subsec. (b).

Subsec. (d). Pub. L. 94–422 added the proviso.

Subsec. (e) Pub. L. 94–422 substantially revised paragraph (2).

Subsec. (f). Pub. L. 94–422 added paragraph (7) and (8).

1974—Subsec. (e)(1). Pub. L. 93–303 inserted sentence relating to waiver of benefits by an owner of a single-family residence who elects to retain a right of use and occupancy for not less than six months from the date of acquisition of the residence.

§ 460*l*–9. Allocation of land and water conservation fund moneys for Federal purposes; payments into miscellaneous receipts of the Treasury as partial offset against capital costs of certain Federal water development projects; acquisition restriction.

(a) Moneys appropriated from the fund for Federal purposes shall, unless otherwise alloted in the appropriation Act making them available, be allotted by the President to the following purposes and subpurposes:

(1) For the acquisition of land, waters, or interests in land or waters as follows:

National Park System; recreation areas.—Within the exterior boundaries of areas of the national park system now or hereafter authorized or established and of areas now or hereafter authorized to be administered by the Secretary of the Interior for outdoor recreation purposes.

National Forest Systems.—In holdings within (a) wilderness areas of the National Forest System, and (b) other areas of national forests as the boundaries of those forests exist on the effective date of this Act, or purchase units approved by the National Forest Reservation Commission subsequent to the date of this Act, all of which other areas are primarily of value for outdoor recreation purposes: *Provided,* That lands outside of but adjacent to an existing national forest boundary, not to exceed three thousand acres in the case of any one forest, which would comprise an integral part of a forest recreational management area may also be acquired with moneys appropriated from this fund: *Provided further,* That except for areas specifically authorized by Act of Congress, not more than 15 per centum of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.

NATIONAL WILDLIFE REFUGE SYSTEM.—Acquisition for (a) endangered species and threatened species authorized under section 1534 of title 16; (b) areas authorized by section 2 of the Act of September 28, 1962, as amended (16 U.S.C. 460k–1); (c) national wildlife refuge areas under section 7(a)(5) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(5)) except migratory waterfowl areas which are authorized to be acquired by the Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715–715s); (d) any areas authorized for the National Wildlife Refuge System by specific Acts.

(2) For payment into miscellaneous receipts of the Treasury as a partial offset for those capital costs, if any, of Federal water development projects hereafter authorized to be constructed by or pursuant to an Act of Congress which are allocated to public recreation and the enhancement of fish and wildlife values and financed through appropriations to water resource agencies.

(b) Appropriations from the fund pursuant to this section shall not be used for acquisition unless such acquisition is otherwise authorized by law.

(Pub. L. 88–578, title I, § 7, formerly § 6, Sept. 3, 1964, 78 Stat. 903, amended Pub. L. 90–401, § 1(c), July 15, 1968, 82 Stat. 355, renumbered Pub. L. 92–347, § 2, July 11, 1972, 86 Stat. 459, and amended Pub. L. 93–205, § 13(c), Dec. 28, 1973, 87 Stat. 902; Pub. L. 94–422, § 101(4), Sept. 28, 1976, 90 Stat. 1317.)

AMENDMENTS

1976—Pub. L. 94–422 amended section generally.

1973—Subsec. (a)(1). Pub. L. 93–205 substituted reference to "Endangered species and threatened species" followed by a definition covering "lands, waters, or interests therein, the acquisition of which is authorized under section 1533(a) of this title, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants" for a reference to "Threatened species" followed by a definition covering "any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction".

§ 460*l*–10. Availability of land and water conservation fund for publicity purposes.

Moneys derived from the sources listed in section 460*l*–5 of this title shall not be available for publicity purposes: *Provided, however,* That in each case where significant acquisition or development is initiated, appropriate standardized temporary signing shall be located on or near the affected site, to the extent feasible, so as to indicate the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the per centum and dollar amounts financed by Federal and non-Federal funds, and that the source of the funding includes moneys derived from Outer Continental Shelf receipts. The Secretary shall prescribe standards and guidelines for the usage of such signing to assure consistency of design and application.

(Pub. L. 88–578, title I, § 7, Sept. 3, 1964, 78 Stat. 903, amended Pub. L. 94–422, § 101(5), Sept. 28, 1976, 90 Stat. 1318.)

AMENDMENTS

1976—Pub. L. 94–422 added proviso.

§ 460*l*–10a. Contracts for acquisition of lands and waters.

Not to exceed $30,000,000 of the money authorized to be appropriated from the fund by section 460*l*–6 of this title may be obligated by contract during each fiscal year for the acquisition of lands, waters, or interests therein within areas specified in section 460*l*–9(a)(1) of this title. Any such contract may be executed by the head of the department concerned, within limitations prescribed by the Secretary of the Interior. Any such contract so entered into shall be deemed a contractual obligation of the United States and shall be liquidated with money appropriated from the fund specifically for liquidation of such contract obligation. No contract may be entered into for the acquisition of property pursuant to this section unless such acquisition is otherwise authorized by Federal law. (Pub. L. 88–578, § 8, as added Pub. L. 90–401, § 4, July 15, 1968, 82 Stat. 355, and amended Pub. L. 91–308, § 3, July 7, 1970, 84 Stat. 410.)

AMENDMENTS

1970–Pub. L. 91–308 substituted "fiscal year" for "of fiscal years 1969 and 1970".

Sections 7 through 10 of Pub. L. 88–578 renumbered sections 8 through 11 of Pub. L. 88–578 by Pub. L. 92–347, § 2, July 11, 1972, 86 Stat. 459.

§ 460*l*–10b. Contracts for options to acquire lands and waters in national park system.

The Secretary of the Interior may enter into contracts for options to acquire lands, waters, or interests therein within the exterior boundaries of any area the acquisition of which is authorized by law for inclusion in the national park system. The minimum period of any such option shall be two years, and any sums expended for the purchase thereof shall be credited to the purchase price of said area. Not to exceed $500,000 of the sum authorized to be appropriated from the fund by section 460*l*–6 of this title may be expended by the Secretary in any one fiscal year for such options. (Pub. L. 88–578, § 9, as added Pub. L. 90–401, § 4, July 15, 1968, 82 Stat. 355.)

Sections 7 through 10 of Pub. L. 88–578 renumbered sections 8 through 11 of Pub. L. 88–578 by Pub. L. 92–347, § 2, July 11, 1972, 86 Stat. 459.

§ 460*l*–10c. Repeal of provisions prohibiting collection of recreation fees or user charges.

There is hereby repealed the third paragraph from the end of the division entitled "National Park Service" of section 1 of the Act of March 7, 1928 (45 Stat. 238) and the second paragraph from the end of the division entitled "National Park Service" of section 1 of the Act of March 4, 1929 (45 Stat. 1602; section 14 of this title). Section 4 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 24, 1944 (section 460d of this title), as amended by the Flood Control Act of 1962 (76 Stat. 1195) is further amended by deleting ", without charge," in the third sentence from the end thereof. All other provisions of law that prohibit the collection of entrance, admission, or other recreation user fees or charges authorized by sections 460*l*–4 to 460*l*–11 of this title or that restrict the expenditure of funds if such fees or charges are collected are hereby also repealed: *Provided*, That no provision of any law or treaty which extends to any person or class of persons a right of free access to the shoreline of any reservoir or other body of water, or to hunting and fishing along or on such shoreline, shall be affected by this repealer. (Pub. L. 88–578, § 10, as added Pub. L. 90–401, § 1(a), July 15, 1968, 82 Stat. 354.)

§ 4606–10d. Review and report.

Within one year of the date of enactment of this section, the Secretary is authorized and directed to submit to the Committees on Interior and Insular Affairs of the Senate and House of Representatives a comprehensive review and report on the needs, problems, and opportunities associated with urban recreation in highly populated regions, including the resources potentially available for meeting such needs. The report shall include site specific analyses and alternatives, in a selection of geographic environments representative of the Nation as a whole, including, but not limited to, information on needs, local capabilities for action, major site opportunities, trends, and a full range of options and alternatives as to possible solutions and courses of action designed to preserve remaining open space, ameliorate recreational deficiency, and enhance recreational opportunity for urban populations, together with an analysis of the capability of the Federal Government to provide urban-oriented environmental education programs (including, but not limited to, cultural programs in the arts and crafts) within such options. The Secretary shall consult with, and request the views of, the affected cities, counties, and States on the alternatives and courses of action identified. (As added Pub. L. 94–422, § 101(6), Sept. 28, 1976, 90 Stat. 1318.)

§ 460*l*–11. Transfers to and from land and water conservation fund.

(a) Motorboat fuel taxes from Highway Trust Fund into conservation fund.

There shall be set aside in the land and water conservation fund in the Treasury of the United States provided for in sections 460*l*–4 to 460*l*–11 of this title the amounts specified in section 209(f)(5) of the Highway Revenue Act of 1956 (relating to special motor fuels and gasoline used in motorboats).

(b) Refunds of gasoline taxes for certain nonhighway purposes or used by local transit systems and motorboat fuel taxes from conservation fund into general fund of the Treasury.

There shall be paid from time to time from the land and water conservation fund into the general fund of the Treasury amounts estimated by the Secretary of the Treasury as equivalent to—

(1) the amounts paid before July 1, 1980, under section 6421 of Title 26 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems) with respect to gasoline used after December 31, 1964, in motor-

boats, on the basis of claims filed for periods ending before October 1, 1979; and

(2) 80 percent of the floor stocks refunds made before July 1, 1980, under section 6412(a)(2) of Title 26 with respect to gasoline to be used in motorboats.

(Pub. L. 88–578, title II, § 201, Sept. 3, 1964, 78 Stat. 904; Pub. L. 91–605, title III, § 302, Dec. 31, 1970, 84 Stat. 1743; Pub. L. 94–280, § 302, May 5, 1976, 90 Stat. 456.)

18. Lower Colorado River Emergency Flood Control Works

22 U.S.C. 277d–26 through 277d–28

§ 277d–26. Lower Colorado River emergency flood control works; agreements with Mexico for joint construction, operation and maintenance.

The Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States and Mexico, is authorized to conclude, with the appropriate official or officials of the Government of Mexico, agreements for emergency flood control measures of international character in the reaches of the lower Colorado River between Imperial Dam and the Gulf of California, in both the United States and Mexico, such agreements to provide: (a) for the joint clearing and maintaining free of trees and brush the bed and banks of the channel; for removing sediment deposits from the river channel; and (b) for corrective actions to guard against sedimentation and consequent aggradation of the river channel incident to desilting operations at diversion dams in the two countries: *Provided*, That, prior approval of the Secretary of the Interior is required of any proposed agreement with Mexico under clause (b) of this section which would involve construction and/or operation of works on the Colorado River in the United States under the jurisdiction of the Secretary. The measures contemplated herein are for the purpose of controlling floods on the lower Colorado, River in accordance with article 13 of the 1944 Water Treaty with Mexico, and accomplishment thereof by the International Boundary and Water Commission, United States Section, would be in accord with the Memorandum of Understanding "as to Functions and Jurisdiction of Agencies of the United States in Relation to the Colorado and Tijuana Rivers and the Rio Grande Below Fort Quitman, Texas, Under Water Treaty Signed at Washington, February 3, 1944," between the Department of State and the United States Section, International Boundary and Water Commission and the Department of the Interior dated February 14, 1945. (Pub. L. 88–411, § 1, Aug. 10, 1964, 78 Stat. 386.)

§ 277d–27. Same; execution of agreements.

The United States Commissioner, International Boundary and Water Commission, United States and Mexico, is authorized to carry out those measures agreed upon for execution by the United States in the agreements concluded pursuant to section 277d–26 of this title. (Pub. L. 88–411, § 2, Aug. 10, 1964, 78 Stat. 386.)

§ 277d–28. Same; authorization of appropriations.

There is authorized to be appropriated to the Department of State for use of the United States Section, International Boundary and Water Commission, United States and Mexico, not in excess of $300,000 for the initial cost of the work authorized in sections 277d–26 to 277d–28 of this title, and not to exceed $30,000 annually thereafter for necessary maintenance. (As amended Pub. L. 93–126, § 7(b), Oct. 18, 1973, 87 Stat. 452.)

AMENDMENTS

1973—Pub. L. 93–126 substituted "$30,000" for "$20,000".

19. Marine Sanctuaries

16 U.S.C. 1431–1434

Sec.
1431. Definition.
1432. Designation of sanctuaries.
(a) Secretary of Commerce; consultation; proposed designations.
(b) Waters lying within the territorial limits of State or superjacent to subsoil and seabed within seaward boundary of coastal State.
(c) Sanctuaries which include areas of ocean waters outside territorial waters of United States.
(d) Annual report to Congress.
(e) Hearings in coastal areas most directly affected.
(f) Regulations controlling activities permitted within sanctuaries.
(g) Accordance of regulations with treaties, conventions, and other agreements.
1433. Penalties.
1434. Authorization of appropriations.

§ 1431. Definition.

The term "Secretary", when used in this chapter, means Secretary of Commerce. (Pub. L. 92–532, title III, § 301, Oct. 23, 1972, 86 Stat. 1061.)

§ 1432. Designation of sanctuaries.

(a) Secretary of Commerce; consultation; proposed designations.

The Secretary, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator, and the heads of other

interested Federal agencies, and with the approval of the President, may designate as marine sanctuaries those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. The consultation shall include an opportunity to review and comment on a specific proposed designation.

(b) Waters lying within the territorial limits of State or superjacent to subsoil and seabed within seaward boundary of coastal State.

Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 1301 of Title 43, the Secretary shall consult with, and give due consideration to the views of, the responsible officials of the State involved. As to such waters, a designation under this section shall become effective sixty days after it is published, unless the Governor of any State involved shall, before the expiration of the sixty-day period, certify to the Secretary that the designation, or a specified portion thereof, is unacceptable to his State, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the Governor withdraws his certification of unacceptability.

(c) Sanctuaries which include areas of ocean waters outside territorial waters of United States.

When a marine sanctuary is designated, pursuant to this section, which includes an area of ocean waters outside the territorial jurisdiction of the United States, the Secretary of State shall take such actions as may be appropriate to enter into negotiations with other Governments for the purpose of arriving at necessary agreements with those Governments, in order to protect such sanctuary and to promote the purposes for which it was established.

(d) Annual report to Congress.

The Secretary shall submit an annual report to the Congress, on or before November 1 of each year, setting forth a comprehensive review of his actions during the previous fiscal year undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries.

(e) Hearings in coastal areas most directly affected.

Before a marine sanctuary is designated under this section, the Secretary shall hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. Such hearings shall be held no earlier than thirty days after the publication of a public notice thereof.

(f) Regulations controlling activities permitted within sanctuaries.

After a marine sanctuary has been designated under this section, the Secretary, after consultation with other interested Federal agencies, shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this chapter and can be carried out within the regulations promulgated under this section.

(g) Accordance of regulations with treaties, conventions, and other agreements.

The regulations issued pursuant to subsection (f) of this section shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign State of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag State of the vessel, no regulation applicable to ocean waters outside the territorial jurisdiction of the United States shall be applied to a person not a citizen of the United States. (Pub. L. 92–532, title III, § 302, Oct. 23, 1972, 86 Stat. 1061.)

§ 1433. Penalties.

(a) Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to this chapter shall be liable to a civil penalty of not more than $50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(c) A vessel used in the violation of a regulation issued pursuant to this chapter shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(d) The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this chapter, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Secretary. (Pub. L. 92–532, title III, § 303, Oct. 23, 1972, 86 Stat. 1062.)

§ 1434. Authorization of appropriations.

There are authorized to be appropriated not to exceed $10,000,000 for each of the fiscal years 1973, 1974, and 1975, not to exceed $6,200,000 for fiscal year 1976, not to exceed $1,550,000 for the transition period (July 1 through September 30, 1976), and not to exceed $500,000 for fiscal year 1977 to carry out the provisions of this chapter, including

the acquisition, development, and operation of marine sanctuaries designated under this chapter. (Pub. L. 92–532, title III, § 304, Oct. 23, 1972, 86 Stat. 1063, amended Pub. L. 94–62, § 4, July 25, 1975, 89 Stat. 303; Pub. L. 94–326, § 4, June 30, 1976, 90 Stat. 725.)

AMENDMENTS

1976—Pub. L. 94–326 authorized appropriations for fiscal year 1977.

1975—Pub. L. 94–62 substituted provisions authorizing to be appropriated not to exceed $10,000,000 for each of the fiscal years 1973, 1974, and 1975, for provisions authorizing to be appropriated for the fiscal year in which this Act was enacted and for the next two fiscal years thereafter not to exceed $10,000,000 for each such fiscal year, and added provisions authorizing to be appropriated not to exceed $6,200,000 for fiscal year 1976, and not to exceed $1,550,000 for the transition period (July 1 through Sept. 30, 1976).

20. National Flood Insurance Act

42 U.S.C. 4001–4127

Sec.

§ 4001. Congressional findings and declaration of purpose.

(a) The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation's resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures; and (4) if such a program is initiated and carried out gradually, it can be expanded as knowledge is gained and experience is appraised, thus eventually making flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection.

(b) The Congress also finds that (1) many factors have made it uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions; but (2) a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry is feasible and can be initiated.

(c) The Congress further finds that (1) a program of flood insurance can promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses; and (2) the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management and, to this end, it is the sense of Congress that within two years following the effective date of this chapter the President should transmit to the Congress for its consideration any further proposals necessary for such a unified program, including proposals for the allocation of costs among beneficiaries of flood protection.

(d) It is therefore the purpose of this chapter to (1) authorize a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry, and (2) provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens

equitably among those who will be protected by flood insurance and the general public.

(e) It is the further purpose of this chapter to (1) encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards, (3) encourage lending and credit institutions, as a matter of national policy, to assist in furthering the objectives of the flood insurance program, (4) assure that any Federal assistance provided under the program will be related closely to all flood-related programs and activities of the Federal Government, and (5) authorize continuing studies of flood hazards in order to provide for a constant reappraisal of the flood insurance program and its effect on land use requirements.

(f) The Congress also finds that (1) the damage and loss which results from mudslides is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this chapter to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this chapter for purposes of the flood insurance program, protection against damage and loss resulting from mudslides that are caused by accumulations of water on or under the ground.

(g) The Congress also finds that (1) the damage and loss which may result from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this chapter to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this chapter for purposes of the flood insurance program, protection against damage and loss resulting from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels. (As amended Pub. L. 93-234, title I, § 108(a), Dec. 31, 1973, 87 Stat. 979.)

AMENDMENTS

1973—Subsec. (g). Pub. L. 93-234 added subsec. (g).

§ 4002. Additional Congressional findings and declaration of purpose.

(a) The Congress finds that—

(1) annual losses throughout the Nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;

(2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;

(3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;

(4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;

(5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood credit institutions whose assets include a substanvictims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and

(6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage, so that they will be indemnified for their losses in the event of future flood disasters.

(b) The purpose of this Act, therefore, is to—

(1) substantially increase the limits of coverage authorized under the national flood insurance program;

(2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;

(3) require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plan ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and

(4) require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards.

(Pub. L. 93-234, § 2, Dec. 31, 1973, 87 Stat. 975.)

§ 4003. Additional definitions.

(a) As used in this Act, unless the context otherwise requires, the term—

(1) "community" means a State or a political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards;

(2) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(3) "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States;

(4) "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance for emergency work essential for the protection and preservation of life and property performed pursuant to the Disaster Relief Act of 1970 or any subsequent Act of Congress which supersedes or modifies the Disaster Relief Act of 1970;

(5) "Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration; and

(6) "Secretary" means the Secretary of Housing and Urban Development.

(b) The Secretary is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act. (Pub. L. 93-234, § 3, Dec. 31, 1973, 87 Stat. 976.)

§ 4011. Authorization to establish and carry out program; participation by insurance companies and other insurers.

(a) To carry out the purposes of this chapter, the Secretary of Housing and Urban Development is authorized to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.

(b) In carrying out the flood insurance program the Secretary shall, to the maximum extent practicable, encourage and arrange for—

(1) appropriate financial participation and risk sharing in the program by insurance companies and other insurers, and

(2) other appropriate participation, on other than a risk-sharing basis, by insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations,

in accordance with the provisions of subchapter II of this chapter. (Pub. L. 90-448, title XIII, § 1304, Aug. 1, 1968, 82 Stat. 574.)

§ 4012. Scope of program and priorities.

(a) Priority for insurance for certain residential and church properties and business concerns.

In carrying out the flood insurance program the Secretary shall afford a priority to making flood insurance available to cover residential properties which are designed for the occupancy of from one to four families, church properties, and business properties which are owned or leased and operated by small business concerns.

(b) Availability of insurance for other properties.

If on the basis of—

(1) studies and investigations undertaken and carried out and information received or exchanged under section 4014 of this title, and

(2) such other information as may be necessary,

the Secretary determines that it would be feasible to extend the flood insurance program to cover other properties, he may take such action under this chapter as from time to time may be necessary in order to make flood insurance available to cover, on such basis as may be feasible, any types and classes of—

(A) other residential properties,

(B) other business properties,

(C) agricultural properties,

(D) properties occupied by private nonprofit organizations, and

(E) properties owned by State and local governments and agencies thereof,

and any such extensions of the program to any types and classes of these properties shall from time to time be prescribed in regulations.

(c) Availability of insurance in States or areas evidencing positive interest in securing insurance and assuring adoption of adequate land use and control measures.

The Secretary shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have—

(1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program, and

(2) given satisfactory assurance that by December 31, 1971, adequate land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 4102 of this title, and that the application and enforcement of such measures will commence as soon as technical in-

formation on floodways and on controlling flood elevations is available.

(Pub. L. 90–448, title XIII, § 1305, Aug. 1, 1968, 82 Stat. 574; Pub. L. 91–152, title IV, § 410(a), Dec. 24, 1969, 83 Stat. 397.)

(As amended Pub. L. 92–213, § 2(c)(1), Dec. 22, 1971, 85 Stat. 775.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 92–213 added reference to church properties.

1969—Subsec. (c)(2). Pub. L. 91–152 substituted "December 31, 1971, adequate" for "June 30, 1970, permanent".

§ 4012a. Requirement of flood insurance for Federal approval of financial assistance.

(a) Amount and term of coverage.

After the expiration of sixty days following December 31, 1973, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Secretary as an area having special flood hazards and in which the sale of flood insurance has been made available under this chapter, unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under this chapter, whichever is less: *Provided,* That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

(b) Federal regulations for flood insurance requirement; amount of coverage.

Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation direct such institutions not to make, increase, extend, or renew after the expiration of sixty days following December 31, 1973, any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards and in which flood insurance has been made available under this chapter, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the chapter, whichever is less.

(c) State-owned property; exemption; list of States.

Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Secretary. The Secretary shall publish and periodically revise the lost of States to which this subsection applies. (Pub. L. 93–234, title I, § 102, Dec. 31 1973, 87 Stat. 978.)

§ 4013. Nature and limitation of insurance coverage; regulations.

(a) The Secretary shall from time to time, after consultation with the advisory committee authorized under section 4025 of this title, appropriate representatives of the pool formed or otherwise created under section 4051 of this title, and appropriate representatives of the insurance authorities of the respective States, provide by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage under section 4012 of this title, including—

(1) the types, classes, and locations of any such properties which shall be eligible for flood insurance;

(2) the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such insurance;

(3) the classification, limitation, and rejection of any risks which may be advisable;

(4) appropriate minimum premiums;

(5) appropriate loss-deductibles; and

(6) any other terms and conditions relating to insurance coverage or exclusion which may be necessary to carry out the purposes of this chapter.

(b) In addition to any other terms and conditions under subsection (a) of this section, such regulations shall provide that—

(1) any flood insurance coverage based on chargeable premium rates under section 4015 of this title which are less than the estimated premium rates under section 4014(a)(1) of this title shall not exceed—

(A) in the case of residential properties—

(i) $35,000 aggregate liability for any single-family dwelling, and $100,000 for any residential structure containing more than one dwelling unit,

(ii) $10,000 aggregate liability per dwelling unit for any contents related to such unit, and

(iii) in the States of Alaska and Hawaii, and in the Virgin Islands and Guam, the limits provided in clause (i) of this sentence shall be: $50,000 aggregate liability for any single-family dwelling, and $150,000 for any residential structure containing more than one dwelling unit;

(B) in the case of business properties which are owned or leased and operated by small business concerns, an aggregate liability with respect to any single structure, including any contents thereof related to premises of small business occupants (as that term is defined by the Secretary), which shall be equal to (i) $100,000 plus (ii) $100,000 multiplied by the number of such occupants and shall be allocated among such occupants (or among the occupant or occupants and the owner) under regulations prescribed by the Secretary; except that the aggregate liability for the structure itself may in no case exceed $100,000; and

(C) in the case of church properties and any other properties which may become eligible for flood insurance under section 4012 of this title—

(i) $100,000 aggregate liability for any single structure, and

(ii) $100,000 aggregate liability per unit for any contents related to such unit; and

(2) any flood insurance coverage which may be made available in excess of any of the limits specified in subparagraph (A), (B), or (C) of paragraph (1) (or allocated to any person under subparagraph (B) of such paragraph) shall be based only on chargeable premium rates under section 4015 of this title which are not less than the estimated premium rates under section 4014 (a) (1) of this title, and the amount of such excess coverage shall not in any case exceed an amount which is equal to the applicable limit so specified (or allocated).

(As amended Pub. L. 92–213, § 2(c)(2), Dec. 22, 1971, 85 Stat. 775; Pub. L. 93–234, title I, § 101, Dec. 31, 1973, 87 Stat. 977.)

AMENDMENTS

1973—Subsec. (b)(1)(A). Pub. L. 93–234, § 101(a), in increasing limits of coverage, deleted following introductory text "residential properties" the clause "which are designed for the occupancy of from one to four families"; substituted provisions in cl. (i) "$35,000 aggregate liability for any single-family dwelling, and $100,000 for any residential structure containing more than one dwelling unit" for "$17,500 aggregate liability for any dwelling unit, and $30,000 for any single dwelling structure containing more than one dwelling unit"; increased cl. (ii) limits to $10,000 from $5,000 and added cl. (iii).

Subsec. (b)(1)(B). Pub. L. 93–234, § 101(b), substituted "$100,000" for "$30,000" in cl. (i), for "$5,000" in cl. (ii), and for "$30,000" in exception provision.

Subsec. (b)(1)(C). Pub. L. 93–234, § 101(c), increased cl. (i) limits to $100,000 from $30,000 and substituted cl. (ii) "$100,000 aggregate liability per unit for any contents related to such unit" for "$5,000 aggregate liability per dwelling unit for any contents related to such unit in the case of residential properties, or per occupant (as that term is defined by the Secretary) for any contents related to the premises occupied in the case of any other properties."

1971—Subsec. (b)(1)(C). Pub. L. 92–213 inserted "church properties, and" preceding "any other properties which may become".

§ 4014. Estimates of premium rates.

(a) Studies and investigations.

The Secretary is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis—

(1) the risk premium rates for flood insurance which—

(A) based on consideration of the risk involved and accepted actuarial principles, and

(B) including—

(i) the applicable operating costs and allowances set forth in the schedules prescribed under section 4018 of this title and reflected in such rates, and

(ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates,

would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available under section 4012(a) of this title (or is recommended to the Congress under section 4012(b) of this title);

(2) the rates, if less than the rates estimated under paragraph (1), which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this chapter; and

(3) the extent, if any, to which federally assisted or other flood protection measures initiated after August 1, 1968, affect such rates.

(b) Utilization of services of other Departments and agencies.

In carrying out subsection (a) of this section, the Secretary shall, to the maximum extent feasible and on a reimbursement basis, utilize the services of the Department of the Army, the Department of the Interior, the Department of Agriculture, the Department of Commerce, and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may enter into agreements or other appropriate arrangements with any persons.

(c) Priority to studies and investigations in States or areas evidencing positive interest in securing insurance under program.

The Secretary shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

(d) Parishes of Louisiana; premium rates.

Notwithstanding any other provision of law, any structure existing on December 31, 1973, and located within Avoyelles, Evangeline, Rapides, or Saint Landry Parish in the State of Louisiana, which the Secretary determines is subject to additional flood hazards as a result of the construction or operation of the Atchafalaya Basin Levee System, shall be eligible for flood insurance under this chapter (if and to the extent it is eligible for such insurance under the other provisions of this chapter) at premium rates that shall not exceed those which would be applicable if such additional hazards did not exist. (As cable if such additional hazards did not exist.

(e) Eligibility of community making adequate progress on construction of flood protection system for rates not exceeding those applicable to completed flood protection system; determination of adequate progress.

Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Secretary, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Secretary, shall be eligible for flood insurance under this chapter (if and to the extent it is eligible for such insurance under the other provi-

sions of this chapter) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Secretary shall find that adequate progress on the construction of a flood protection system as required herein has been only if (1) 100 percent of the project cost of the system has been authorized, (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended, and (4) the system is at least 50 percent completed. (As amended Pub. L. 93–234, title I, § 109 Dec. 31, 1973, 87 Stat. 980; Pub. L. 93–383, title VIII, § 816(b), Aug. 22, 1974, 88 Stat. 739.)

AMENDMENTS

1974—Subsec. (e). Pub. L. 93–383 added subsec. (e).
1973—Subsec. (d). Pub. L. 93–234 added subsec. (d).

§ 4015. Chargeable premium rates.

(a) Establishment; terms and conditions.

On the basis of estimates made under section 4014 of this title, and such other information as may be necessary, the Secretary shall from time to time, after consultation with the advisory committee authorized under section 4025 of this title, appropriate representatives of the pool formed or otherwise created under section 4051 of this title, and appropriate representatives of the insurance authorities of the respective States, prescribe by regulation—

(1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 4012 of this title (at less than the estimated risk premium rates under section 4014(a)(1) of this title, where necessary), and

(2) the terms and conditions under which, and the areas (including subdivisions thereof) within which, such rates shall apply.

(b) Considerations for rates.

Such rates shall, insofar as practicable, be—

(1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, flood-proofing, flood forecasting, and similar measures.

(2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this chapter, and

(3) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 4014(a)(1) of this title and the estimated rates under section 4014(a)(2) of this title.

(c) Rate with respect to property the construction or substantial improvement of which has been started after December 31, 1974, or effective date of initial rate map published for area in which property is located, whichever is later.

Notwithstanding any other provision of this chapter, the chargeable rate with respect to any property, the construction or substantial improvements of which the Secretary determines has been started after December 31, 1974, or the effective date of the initial rate map published by the Secretary under paragraph (2) of section 4101 of this title for the area in which such property is located, whichever is later, shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 4014(a)(1) of this title.

(d) Payment of certain sums to Secretary; deposits in Fund.

In the event any chargeable premium rate prescribed under this section—

(1) is a rate which is not less than the applicable estimated risk premium rate under section 4014(a)(1) of this title, and

(2) includes any amount for administrative expenses of carrying out the flood insurance program which have been estimated under clause (ii) of section 4014(a)(1)(B) of this title,

a sum equal to such amount shall be paid to the Secretary, and he shall deposit such sum in the National Flood Insurance Fund established under section 4017 of this title. (Pub. L. 90–448, title XIII, § 1308, Aug. 1, 1968, 82 Stat. 576.)

§ 4016. Financing provisions; issuance of notes or other obligations; limitation; report to Congressional Committees; deposits in Fund.

(a) All authority which was vested in the Housing and Home Finance Administrator by virtue of section 2414(e) of this title (pertaining to the issue of notes or other obligations to the Secretary of the Treasury), as amended by subsections (a) and (b) of section 1303 of this Act, shall be available to the Secretary for the purpose of carrying out the flood insurance program under this chapter; except that the total amount of notes and obligations which may be issued by the Secretary pursuant to such authority (1) without the approval of the President, may not exceed $500,000,000, and (2) with the approval of the President, may not exceed $1,000,000,000. The Secretary shall report to the Committee on Banking and Currency of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate at any time when he requests the approval of the President in accordance with the preceding sentence.

(b) Any funds borrowed by the Secretary under this authority shall, from time to time, be deposited in the National Flood Insurance Fund established under section 4017 of this title. (Pub. L. 90–448, title XIII, § 1309, Aug. 1, 1968, 82 Stat. 577.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–234 substituted provisions respecting issuance of notes and obligation for $500,000,000 without approval of President and for $1,000,000,000 with approval of President, for former provision prescribing a $250,000,000 limitation, deleted provision rescinding authority of Secretary to issue notes and

§ 4017. National Flood Insurance Fund.

(a) Establishment; availability.

To carry out the flood insurance program au-

thorized by this chapter, the Secretary is authorized to establish in the Treasury of the United States a National Flood Insurance Fund (hereinafter referred to as the "fund") which shall be available, without fiscal year limitation—

(1) for making such payments as may, from time to time, be required under section 4054 of this title;

(2) to pay reinsurance claims under the excess loss reinsurance coverage provided under section 4055 of this title;

(3) to repay to the Secretary of the Treasury such sums as may be borrowed from him (together with interest) in accordance with the authority provided in section 4016 of this title; and

(4) to pay such administrative expenses (or portion of such expenses) of carrying out the flood insurance program as he may deem necessary; and

(5) for the purposes specified in subsection (d) of this section under the conditions provided therein.

(b) Credits to Fund.

The fund shall be credited with—

(1) such funds borrowed in accordance with the authority provided in section 4016 of this title as may from time to time be deposited in the fund;

(2) premiums, fees, or other charges which may be paid or collected in connection with the excess loss reinsurance coverage provided under section 4055 of this title;

(3) such amounts as may be advanced to the fund from appropriations in order to maintain the fund in an operative condition adequate to meet its liabilities;

(4) interest which may be earned on investments of the fund pursuant to subsection (c) of this section;

(5) such sums as are required to be paid to the Secretary under section 4015(d) of this title; and

(6) receipts from any other operations under this chapter (including premiums under the conditions specified in subsection (d) of this section, and salvage proceeds, if any, resulting from reinsurance coverage).

(c) Investment of moneys in obligations issued or guaranteed by United States.

If, after—

(1) all outstanding obligations of the fund have been liquidated, and

(2) any outstanding amounts which may have been advanced to the fund from appropriations authorized under section 4127(a)(2)(B) of this title have been credited to the appropriation from which advanced, with interest accrued at the rate prescribed under section 2414(e) of this title, as in effect immediately prior to the enactment of this chapter,

the Secretary determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(d) Availability of Fund if operation of program is carried out through facilities of Federal Government.

In the event the Secretary makes a determination in accordance with the provisions of section 4071 of this title that operation of the flood insurance program, in whole or in part, should be carried out through the facilities of the Federal Government, the fund shall be available for all purposes incident thereto, including—

(1) cost incurred in the adjustment and payment of any claims for losses, and

(2) payment of applicable operating costs set forth in the schedules prescribed under section 4018 of this title,

for so long as the program is so carried out, and in such event any premiums paid shall be deposited by the Secretary to the credit of the fund.

(e) Annual budget.

An annual business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by law (sections 847, 848, and 849 of Title 31) for wholly-owned Government corporations. (Pub. L. 90–448, title XIII, § 1310, Aug. 1, 1968, 82 Stat. 577.)

§ 4018. Operating costs and allowances; definitions.

(a) The Secretary shall from time to time negotiate with appropriate representatives of the insurance industry for the purpose of establishing—

(1) a current schedule of operating costs applicable both to risk-sharing insurance companies and other insurers and to insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations participating on other than a risk-sharing basis, and

(2) a current schedule of operating allowances applicable to risk-sharing insurance companies and other insurers,

which may be payable in accordance with the provisions of subchapter II of this chapter, and such schedules shall from time to time be prescribed in regulations.

(b) For purposes of subsection (a) of this section—

(1) the term "operating costs" shall (without limiting such term) include—

(A) expense reimbursements covering the direct, actual, and necessary expenses incurred in connection with selling and servicing flood insurance coverage;

(B) reasonable compensation payable for selling and servicing flood insurance coverage, or commissions or service fees paid to producers;

(C) loss adjustment expenses; and

(D) other direct, actual, and necessary expenses which the Secretary finds are incurred in connection with selling or servicing flood insurance coverage; and

(2) the term "operating allowances" shall (without limiting such term) include amounts for

profit and contingencies which the Secretary finds reasonable and necessary to carry out the purposes of this chapter.

(Pub. L. 90–448, title XIII, § 1311, Aug. 1, 1968, 82 Stat. 579.)

§ 4019. Payment of claims.

The Secretary is authorized to prescribe regulations establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by flood insurance made available under the provisions of this chapter. (Pub. L. 90–448, title XIII, § 1312, Aug. 1, 1968, 82 Stat. 579.)

§ 4020. Dissemination of flood insurance information.

The Secretary shall from time to time take such action as may be necessary in order to make information and data available to the public, and to any State or local agency or official, with regard to—

(1) the flood insurance program, its coverage and objectives, and

(2) estimated and chargeable flood insurance premium rates, including the basis for and differences between such rates in accordance with the provisions of section 4015 of this title.

(Pub. L. 90–448, title XIII, § 1313, Aug. 1, 1968, 82 Stat. 579.)

§ 4021. Repealed. Pub. L. 93–23, title II, § 203, Dec. 31, 1973, 87 Stat. 982.

Section, Pub. L. 90–448, title XIII, § 1314, Aug. 1, 1968, 82 Stat. 579 denied Federal disaster assistance after Dec. 31, 1973, to persons who for a period of a year or more could have purchased flood insurance but did not do so, and defined "Federal disaster assistance" and "financial assistance".

LOSS, DESTRUCTION, OR DAMAGE OCCURRING ON OR BEFORE DECEMBER 31, 1973

Pub. L. 92–213, § 2(b), Dec. 22, 1971, 85 Stat. 775, provided that: "The provisions of section 1314(a)(2) of such Act [subsec. (a)(2) of this section] shall not apply with respect to any loss, destruction, or damage of real or personal property that occurs on or before December 31, 1973."

§ 4022. State and local land use controls.

After December 31, 1971, no new flood insurance coverage shall be provided under this chapter in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Secretary finds are consistent with the comprehensive criteria for land management and use under section 4102 of this title. (Pub. L. 90–448, title XIII, § 1315, Aug. 1, 1968, 82 Stat. 580; Pub. L. 91–152, title IV, § 410(b), Dec. 24, 1969, 83 Stat. 397.)

AMENDMENTS

1969—Pub. L. 91–152 substituted provisions prohibiting new flood insurance coverage after Dec. 31, 1971 unless adequate land use measures have been adopted, for provisions prohibiting such coverage after June 30, 1970 unless permanent land use measures have been adopted.

§ 4023. Properties in violation of State and local law.

No new flood insurance coverage shall be provided under this chapter for any property which the Secretary finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas. (Pub. L. 90–448, title XIII, § 1316, Aug. 1, 1968, 82 Stat. 580.)

§ 4024. Coordination with other programs.

In carrying out this chapter, the Secretary shall consult with other departments and agencies of the Federal Government, and with interstate, State, and local agencies having responsibilities for flood control, flood forecasting, or flood damage prevention, in order to assure that the programs of such agencies and the flood insurance program authorized under this chapter are mutually consistent. (Pub. L. 90–448, title XIII, § 1317, Aug. 1, 1968, 82 Stat. 581.)

§ 4025. Flood insurance advisory committee.

(a) Appointment; duties.

The Secretary shall appoint a flood insurance advisory committee without regard to the provisions of Title 5 governing appointments in the competitive service, and such committee shall advise the Secretary in the preparation of any regulations prescribed in accordance with this chapter and with respect to policy matters arising in the administration of this chapter, and shall perform such other responsibilities as the Secretary may, from time to time, assign to such committee.

(b) Membership.

Such committee shall consist of not more than fifteen persons and such persons shall be selected from among representatives of—

(1) the insurance industry,

(2) State and local governments,

(3) lending institutions,

(4) the homebuilding industry, and

(5) the general public.

(c) Compensation and travel expenses.

Members of the committee shall, while attending conferences or meetings thereof, be entitled to receive compensation at a rate fixed by the Secretary but not exceeding $100 per day, including travel-time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of Title 5 for persons in the Government service employed intermittently. (Pub. L. 90–448, title XIII, § 1318, Aug. 1, 1968, 82 Stat. 581.)

§ 4026. Expiration of program.

No new contract for flood insurance under this chapter shall be entered into after June 30, 1977. (As amended Pub. L. 93–4, Feb. 2, 1973, 87 Stat. 4, Pub. L. 93–38, June 5, 1973, 87 Stat. 73; Pub. L. 93–234, title I, § 105, Dec. 31, 1973, 87 Stat. 979.)

AMENDMENTS

1973—Pub. L. 93–234 substituted expiration of program provisions for $6,000,000,000 limitation on flood insurance coverage outstanding.

Pub. L. 93–38 increased limitation on face amount of outstanding flood insurance coverage from $4,000,000,000 to $6,000,000,000.

Pub. L. 93–4 increased limitation on face amount of outstanding flood insurance coverage from $2,500,000,000 to $4,000,000,000.

§ 4027. Annual report to the President.

The Secretary shall include a report of operations under this chapter in the annual report to the President for submission to the Congress required by section 3536 of this title. (Pub. L. 90–448, title XIII, § 1320, Aug. 1, 1968, 82 Stat. 581.)

SUBCHAPTER II.—ORGANIZATION AND ADMINISTRATION OF FLOOD INSURANCE PROGRAM

§ 4041. Implementation of program.

Following such consultation with representatives of the insurance industry as may be necessary, the Secretary shall implement the flood insurance program authorized under subchapter I of this chapter in accordance with the provisions of part A of this subchapter and, if a determination is made by him under section 4071 of this title, under part B of this subchapter. (Pub. L. 90–448, title XIII, § 1330, Aug. 1, 1968, 82 Stat. 581.)

PART A.—INDUSTRY PROGRAM WITH FEDERAL FINANCIAL ASSISTANCE

§ 4051. Industry flood insurance pool; requirements for participation.

(a) The Secretary is authorized to encourage and otherwise assist any insurance companies and other insurers which meet the requirements prescribed under subsection (b) of this section to form, associate, or otherwise join together in a pool—

(1) in order to provide the flood insurance coverage authorized under subchapter I of this chapter; and

(2) for the purpose of assuming, on such terms and conditions as may be agreed upon, such financial responsibility as will enable such companies and other insurers, with the Federal financial and other assistance available under this chapter, to assume a reasonable proportion of responsibility for the adjustment and payment of claims for losses under the flood insurance program.

(b) In order to promote the effective administration of the flood insurance program under this part, and to assure that the objectives of this chapter are furthered, the Secretary is authorized to prescribe appropriate requirements for insurance companies and other insurers participating in such pool including, but not limited to, minimum requirements for capital or surplus or assets. (Pub. L. 90–448, title XIII, § 1331, Aug. 1, 1968, 82 Stat. 582.)

§ 4052. Agreements with flood insurance pool; terms and conditions.

(a) The Secretary is authorized to enter into such agreements with the pool formed or otherwise created under this part as he deems necessary to carry out the purposes of this chapter.

(b) Such agreements shall specify—

(1) the terms and conditions under which risk capital will be available for the adjustment and payment of claims,

(2) the terms and conditions under which the pool (and the companies and other insurers participating therein) shall participate in premiums received and profits or losses realized or sustained,

(3) the maximum amount of profit, established by the Secretary and set forth in the schedules prescribed under section 4018 of this title, which may be realized by such pool (and the companies and other insurers participating therein),

(4) the terms and conditions under which operating costs and allowances set forth in the schedules prescribed under section 4018 of this title may be paid, and

(5) the terms and conditions under which premium equalization payments under section 4054 of this title will be made and reinsurance claims under section 4055 of this title will be paid.

(c) In addition, such agreements shall contain such provisions as the Secretary finds necessary to assure that—

(1) no insurance company or other insurer which meets the requirements prescribed under section 4051(b) of this title, and which has indicated an intention to participate in the flood insurance program on a risk-sharing basis, will be excluded from participating in the pool,

(2) the insurance companies and other insurers participating in the pool will take whatever action may be necessary to provide continuity of flood insurance coverage by the pool, and

(3) any insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations will be permitted to cooperate with the pool as fiscal agents or otherwise, on other than a risk-sharing basis, to the maximum extent practicable.

(Pub. L. 90–448, title XIII, § 1332, Aug. 1, 1968, 82 Stat. 582.)

§ 4053. Adjustment and payment of claims; judicial review; limitations; jurisdiction.

The insurance companies and other insurers which form, associate, or otherwise join together in the pool under this part may adjust and pay all claims for proved and approved losses covered by flood insurance in accordance with the provisions of this chapter and, upon the disallowance by any such company or other insurer of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance of the claim, may institute an action on such claim against such company or other insurer in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy. (Pub. L. 90–448, title XIII, § 1333, Aug. 1, 1968, 82 Stat. 583.)

§ 4054. Premium equalization payments; basis; aggregate amount; establishment of designated periods.

(a) The Secretary, on such terms and conditions as he may from time to time prescribe, shall make periodic payments to the pool formed or otherwise created under section 4051 of this title, in recognition of such reductions in chargeable premium rates under section 4015 of this title below estimated premium rates under section 4014(a)(1) of this title as are required in order to make flood insurance available on reasonable terms and conditions.

(b) Designated periods under this section and the methods for determining the sum of premiums paid or payable during such periods shall be established by the Secretary. (As amended Pub. L. 93-234, title I, § 111, Dec. 31, 1973, 87 Stat. 981.)

AMENDMENTS

1973—Subsec. (b). Pub. L. 93-234 redesignated former subsec. (c) as (b), and struck out former subsec. (b) prescribing formula for sharing losses between Government and industry and permit necessary flexibility in loss sharing to take into account longer-term loss experience trends and to compensate for lack of precision in actuarial computations.

Subsec. (c). Pub. L. 93-234 redesignated former subsec. (c) as (b).

§ 4055. Reinsurance coverage.

(a) Availability for excess losses.

The Secretary is authorized to take such action as may be necessary in order to make available, to the pool formed or otherwise created under section 4051 of this title, reinsurance for losses (due to claims for proved and approved losses covered by flood insurance) which are in excess of losses assumed by such pool in accordance with the excess loss agreement entered into under subsection (c) of this section.

(b) Availability pursuant to contract, agreement, or other arrangement; payment of premium, fee, or other charge.

Such reinsurance shall be made available pursuant to contract, agreement, or any other arrangement, in consideration of such payment of a premium, fee, or other charge as the Secretary finds necessary to cover anticipated losses and other costs of providing such reinsurance.

(c) Excess loss agreement; negotiation.

The Secretary is authorized to negotiate an excess loss agreement, from time to time, under which the amount of flood insurance retained by the pool, after ceding reinsurance, shall be adequate to further the purposes of this chapter, consistent with the objective of maintaining appropriate financial participation and risk sharing to the maximum extent practicable on the part of participating insurance companies and other insurers.

(d) Submission of excess losses on portfolio basis.

All reinsurance claims for losses in excess of losses assumed by the pool shall be submitted on a portfolio basis by such pool in accordance with terms and conditions established by the Secretary. (Pub. L. 90-448, title XIII, § 1335, Aug. 1, 1968, 82 Stat. 583.)

§ 4056. Emergency implementation of flood insurance program; applicability of other provisions of law.

(a) Notwithstanding any other provisions of this chapter, for the purpose of providing flood insurance coverage at the earliest possible time, the Secretary shall carry out the flood insurance program authorized under subchapter I of this chapter during the period ending September 30, 1977, in accordance with the provisions of this part and the other provisions of this chapter insofar as they relate to this part but subject to the modifications made by or under subsection (b) of this section.

(b) In carrying out the flood insurance program pursuant to subsection (a) of this section, the Secretary—

(1) shall provide insurance coverage without regard to any estimated risk premium rates which would otherwise be determined under section 4014 of this title; and

(2) shall utilize the provisions and procedures contained in or prescribed by this part (other than section 4054 of this title) and sections 4081 and 4082 of this title to such extent and in such manner as he may consider necessary or appropriate to carry out the purpose of this section.

(As amended Pub. L. 92-213, § 2(a), Dec. 22, 1971, 85 Stat. 775; Pub. L. 93-234, title I, § 106, Dec. 31, 1973, 87 Stat. 979; Pub. L. 94-173, § 5, Dec. 23, 1975, 89 Stat. 1028; Pub. L. 94-375, § 14(b) Aug. 3, 1976, 90 Stat. 1075.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-375 substituted "September 30, 1977" for "December 31, 1976".

1973—Subsec. (a). Pub. L. 93-234 substituted "December 31, 1975" for "December 31, 1973".

1971—Subsec. (a). Pub. L. 92-213 substituted "December 31, 1973" for "December 31, 1971".

PART B.—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

§ 4071. Federal operation of program; determination by Secretary; fiscal agents; report to the Congress.

(a) If at any time, after consultation with representatives of the insurance industry, the Secretary determines that operation of the flood insurance program as provided under part A cannot be carried out, or that such operation, in itself, would be assisted materially by the Federal Government's assumption, in whole or in part, of the operational responsibility for flood insurance under this chapter (on a temporary or other basis) he shall promptly undertake any necessary arrangements to carry out the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government, utilizing, for purposes of providing flood insurance coverage, either—

(1) insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States,

(2) officers and employees of the Department of Housing and Urban Development, and such other officers and employees of any executive agency (as defined in section 105 of Title 5) as the

Secretary and the head of any such agency may from time to time, agree upon, on a reimbursement or other basis, or

(3) both the alternatives specified in paragraphs (1) and (2).

(b) Upon making the determination referred to in subsection (a) of this section, and at least thirty days prior to implementing the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government, the Secretary shall make a report to the Congress and such report shall—

(1) state the reasons for such determination,

(2) be supported by pertinent findings,

(3) indicate the extent to which it is anticipated that the insurance industry will be utilized in provding flood insurance coverage under the program, and

(4) contain such recommendations as the Secretary deems advisable.

(Pub. L. 90–448, title XIII, § 1340, Aug. 1, 1968, 82 Stat. 584.)

§ 4072. Adjustment and payment of claims; judicial review; limitations; jurisdiction.

In the event the program is carried out as provided in section 4071 of this title, the Secretary shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the Secretary of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the Secretary, may institute an action against the Secretary on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy. (Pub. L. 90–448, title XIII, § 1341, Aug. 1, 1968, 82 Stat. 584.)

PART C.—GENERAL PROVISIONS

§ 4081. Services by insurance industry; contracts, agreements, or other arrangements.

(a) In administering the flood insurance program under this subchapter, the Secretary is authorized to enter into any contracts, agreements, or other appropriate arrangements which may, from time to time, be necessary for the purpose of utilizing, on such terms and conditions as may be agreed upon, the facilities and services of any insurance companies or other insurers, insurance agents and brokers, or insurance adjustment organizations; and such contracts, agreements, or arrangements may include provision for payment of applicable operating costs and allowances for such facilities and services as set forth in the schedules prescribed under section 4018 of this title.

(b) Any such contracts, agreements, or other arrangements may be entered into without regard to the provisions of section 5 of Title 41 or any other provision of law requiring competitive bidding. (Pub. L. 90–448, title XIII, § 1345, Aug. 1, 1968, 82 Stat. 585.)

§ 4082. Use of insurance pool, companies, or other private organizations for certain payments.

(a) Authorization to enter into contracts for certain responsibilities.

In order to provide for maximum efficiency in the administration of the flood insurance program and in order to facilitate the expeditious payment of any Federal funds under such program, the Secretary may enter into contracts with pool formed or otherwise created under section 4051 of this title, or any insurance company or other private organization, for the purpose of securing performance by such pool, company, or organization of any or all of the following responsibilities:

(1) estimating and later determining any amounts of payments to be made;

(2) receiving from the Secretary, disbursing, and accounting for funds in making such payments;

(3) making such audits of the records of any insurance company or other insurer, insurance agent or broker, or insurance adjustment organization as may be necessary to assure that proper payments are made; and

(4) otherwise assisting in such manner as the contract may provide to further the purposes of this chapter.

(b) Terms and conditions of contract.

Any contract with the pool or an insurance company or other private organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate for carrying out responsibilities under subsection (a) of this section, and may provide for payment of any costs which the Secretary determines are incidental to carrying out such responsibilities which are covered by the contract.

(c) Competitive bidding.

Any contract entered into under subsection (a) of this section may be entered into without regard to section 5 of Title 41 or any other provision of law requiring competitive bidding.

(d) Findings of Secretary.

No contract may be entered into under this section unless the Secretary finds that the pool, company, or organization will perform its obligations under the contract efficiently and effectively, and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(e) Bond; liability of certifying officers and disbursing officers.

(1) Any such contract may require the pool, company, or organization or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may

deem appropriate.

(2) No individual designated pursuant to a contract under this section to certify payments shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this section.

(3) No officer disbursing funds shall in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by an individual designated to certify payments as provided in paragraph (2) of this subsection.

(f) Term of contract; renewals; termination.

Any contract entered into under this section shall be for a term of one year, and may be made automatically renewable from term to term in the absence of notice by either party of an intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after reasonable notice to the pool, company, or organization involved) if he finds that the pool, company, or organization has failed substantially to carry out the contract, or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the flood insurance program authorized under this chapter. (Pub. L. 90–448, title XIII, § 1346, Aug. 1, 1968, 82 Stat. 585.)

§ 4083. Settlement of claims; arbitration.

(a) The Secretary is authorized to make final settlement of any claims or demands which may arise as a result of any financial transactions which he is authorized to carry out under this subchapter, and may, to assist him in making any such settlement, refer any disputes relating to such claims or demands to arbitration, with the consent of the parties concerned.

(b) Such arbitration shall be advisory in nature, and any award, decision, or recommendation which may be made shall become final only upon the approval of the Secretary. (Pub. L. 90–448, title XIII, § 1347, Aug. 1, 1968, 82 Stat. 586.)

§ 4084. Records and audits.

(a) The flood insurance pool formed or otherwise created under part A of this subchapter, and any insurance company or other private organization executing any contract, agreement, or other appropriate arrangement with the Secretary under part B of this subchapter or this part, shall keep such records as the Secretary shall prescribe, including records which fully disclose the total costs of the program undertaken or the services being rendered, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the pool and any such insurance company or other private organization that are pertinent to the costs of the program undertaken or the services being rendered. (Pub. L. 90–448, title XIII, § 1348, Aug. 1, 1968, 82 Stat. 586.)

SUBCHAPTER III.—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

§ 4101. Identification of flood-prone areas.

(a) Publication of information; establishment of flood-risk zones; estimates of flood-caused loss.

The Secretary is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—

(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which has special floor hazards, within five years following August 1, 1968, and

(2) establish flood-risk zones in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas, within fifteen years following such date.

(b) Accelerated identification of flood-risk zones; authority of Secretary; grants, technical assistance, transactions, and payments.

The Secretary is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Secretary is authorized, without regard to section 529 of Title 31 and section 5 of Title 41, to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

(c) Priority in allocation of manpower and other available resources for identification and mapping of flood hazard areas and flood-risk zones.

The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the Secretary, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the Secretary to meet the deadline established by this section. (As amended Pub. L. 93–234, title II, § 204, Dec. 31, 1973, 87 Stat. 983.)

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AMENDMENTS

1973—Pub. L. 93-234 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 4102. Criteria for land management and use.

(a) Studies and investigations.

The Secretary is authorized to carry out studies and investigations, utilizing to the maximum extent practicable the existing facilities and services of other Federal departments or agencies, and State and local governmental agencies, and any other organizations, with respect to the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention, and may enter into any contracts, agreements, or other appropriate arrangements to carry out such authority.

(b) Extent of studies and investigations.

Such studies and investigations shall include, but not be limited to, laws, regulations, or ordinances relating to encroachments and obstructions on stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions.

(c) Development of comprehensive criteria designed to encourage adoption of adequate State and local measures.

On the basis of such studies and investigations, and such other information as he deems necessary, the Secretary shall from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will—

(1) constrict the development of land which is exposed to flood damage where appropriate,

(2) guide the development of proposed construction away from locations which are threatened by flood hazards,

(3) assist in reducing damage caused by floods, and

(4) otherwise improve the long-range land management and use of flood-prone areas,

and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures. (Pub. L. 90-448, title XIII, § 1361, Aug. 1, 1968, 82 Stat. 587; Pub. L. 91-152, title IV, § 410(c), Dec. 24, 1969, 83 Stat. 397.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91-152 substituted provisions requiring the development of criteria designed to encourage the adoption of adequate State and local measures, for provisions requiring the development of criteria designed to encourage the adoption of permanent State and local measures.

§ 4103. Purchase of insured properties damaged substantially beyond repair by flood.

The Secretary may, when he determines that the public interest would be served thereby, enter into negotiations with any owner of real property or interest therein which—

(1) was located in any flood-risk area, as determined by the Secretary,

(2) was covered by flood insurance under the flood insurance program authorized under this chapter, and

(3) was damaged substantially beyond repair by flood while so covered,

and may purchase such property or interests therein, for subsequent transfer, by sale, lease, donation, or otherwise, to any State or local agency which enters into an agreement with the Secretary that such property shall, for a period not less than forty years following transfer, be used for only such purposes as the Secretary may, by regulation, determine to be consistent with sound land management and use in such area. (Pub. L. 90-448, title XIII, § 1362, Aug. 1, 1968, 82 Stat. 588.)

§ 4104. Flood elevation determinations.

(a) Publication or notification of proposed flood elevation determinations.

In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 4102 of this title, the Secretary shall first propose such determinations by publication for comment in the Federal Register, by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper.

(b) Publication of flood elevation determinations; appeal of owner or lessee to local government; scientific or technical knowledge or information as basis for appeal; modification of proposed determinations.

The Secretary shall publish notification of flood elevation determinations in a prominent local newspaper at least twice during the ten-day period following notification to the local government. During the ninety-day period following the second publication, any owner or lessee of real property within the community who believes his property rights to be adversely affected by the Secretary's proposed determination may appeal such determination to the local government. The sole basis for such appeal shall be the possession of knowledge or information indicating that the elevations being proposed by the Secretary with respect to an identified area having special flood hazards are scientifically or technically incorrect, and the sole relief which shall be granted under the authority of this section in the event that such appeal is sustained in accordance with subsection (e) or (f) of this section is a modification of the Secretary's proposed determination accordingly.

(c) Appeals by private persons; submission of negativing or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Secretary; filing of community action with Secretary.

Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Secretary's finding in such form as the chief executive officer may specify. The community shall review

and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Secretary's determination, copies of individual appeals shall be sent to the Secretary as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Secretary not later than ninety days after the date of the second newspaper publication of the Secretary's notification.

(d) Administrative review of appeals by private persons; modification of proposed determinations; decision of Secretary: form and distribution.

In the event the Secretary does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (e) of this section, the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Secretary's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(e) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Secretary; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information.

Upon appeal by any community, as provided by this section, the Secretary shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Secretary shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice. Until the conflict in data is resolved, and the Secretary makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Secretary shall make his determination within a reasonable time. The community shall be given a reasonable time after the Secretary's final determination in which to adopt local land use and control measures consistent with the Secretary's determination. The reports and other information used by the Secretary in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(f) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations.

Any appellant aggrieved by any final determination of the Secretary upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of Title 5. During the pendency of any such litigation, all final determinations of the Secretary shall be effective for the purposes of this chapter unless stayed by the court for good cause shown. (Pub. L. 90–448, title XIII, § 1363, as added Pub. L. 93–234, title I, § 110, Dec. 31, 1973, 87 Stat. 980.)

§ 4104a. Notification of purchaser or lessee of special flood hazards in area of location of improved real estate or mobile home securing loan; regulations prescribing procedures.

Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation require such institutions, as a condition of making, increasing, extending, or renewing (after the expiration of thirty days following August 22, 1974) any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary under this chapter or Public Law 93–234 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. (Pub. L. 90–448, title XIII, § 1364, as added Pub. L. 93–383, title VIII, § 816(a), Aug. 22, 1974, 88 Stat. 739.)

§ 4105. Disaster mitigation requirements; notification to flood-prone areas.

(a) Initial notification.

Not later than six months following December 31, 1973, the Secretary shall publish information in accordance with section 4101(1) of this title, and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

(b) Alternative actions of tentatively identified communities; public hearing; opportunity for submission of evidence; finality of administrative determination of existence or extent of flood hazard area.

After such notification, each tentatively identified community shall either (1) promptly make proper application to participate in the national flood insurance program or (2) within six months submit technical data sufficient to establish to the satisfaction of the Secretary that the community either is not seriously flood prone or that such flood hazards as may have existed have been corrected by flood-

works or other flood control methods. The Secretary may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. If the Secretary decides not to hold a hearing, the community shall be given an opportunity to submit written and documentary evidence. Whether or not such hearing is granted, the Secretary's final determination as to the existence or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act if supported by substantial evidence in the record considered as a whole.

(c) Subsequent notification to additional communities known to be flood-prone areas.

As information becomes available to the Secretary concerning the existence of flood hazards in communities not known to be flood prone at the time of the initial notification provided for by subsection (a) of this section he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

(d) Provisions of section 4106 applicable to flood-prone communities disqualified for flood insurance program.

Formally identified flood-prone communities that do not qualify for the national flood insurance program within one year after such notification or by the date specified in section 4106 of this title, whichever is later, shall thereafter be subject to the provisions of that section relating to flood-prone communities which are not participating in the program. (Pub. L. 93–234, title II, § 201, Dec. 31, 1973, 87 Stat. 982.)

§ 4106. Same; nonparticipation in flood insurance program.

(a) Prohibition of Federal approval of financial assistance.

No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Secretary as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) Federal regulations against loans by financial institutions.

Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation prohibit such institutions on and after July 1, 1975, from making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards, unless the community in which such area is situated is then participating in the national flood insurance program, except that the prohibition contained in this sentence shall not apply to (1) any loan made to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling, (2) any loan, which does not exceed an amount prescribed by the Secretary, to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (3) any loan or loans, which in the aggregate do not exceed $5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976, or (4) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm. (Pub. L. 93–234, title II, § 202, Dec. 31, 1973, 87 Stat. 982, amended Pub. L. 94–50, title III, § 303, July 2, 1975, 89 Stat. 256; Pub. L. 94–198, Dec. 3, 1975, 89 Stat. 1116; Pub. L. 94–375, § 14(a), Aug. 3, 1976, 90 Stat. 1075.)

CODIFICATION

Section was enacted as part of Flood Disaster Protection Act of 1973, and not as part of National Flood Insurance Act of 1968, which is classified to this chapter.

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–198 substituted "March 1, 1976" for "January 1, 1976".

Pub. L. 94–50 added provision excepting from the prohibition of this section any loan made prior to January 1, 1976, to finance the acquisition of a previously occupied residential dwelling.

§ 4107. Same; consultation with local officials; scope.

In carrying out his responsibilities under the provisions of this title and this chapter which relate to notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies, the Secretary shall establish procedures assuring adequate consultation with the appropriate elected officials of general purpose local governments, including but not limited to those local governments whose prior eligibility under the program has been suspended. Such consultation shall include, but not be limited to, fully informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the Secretary concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained. The Secretary shall encourage local officials to disseminate information concerning such study widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency

during the course of the study. (Pub. L. 93–234, title II, § 206, Dec. 31, 1973, 87 Stat. 983.)

SUBCHAPTER IV.—GENERAL PROVISIONS

§ 4121. Definitions.

(a) As used in this chapter—

(1) the term "flood" shall have such meaning as may be prescribed in regulations of the Secretary, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms "United States" (when used in a geographic sense) and "State" includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms "insurance company", "other insurer" and "insurance agent or broker" include any organizations and persons authorized to engage in the insurance business under the laws of any State;

(4) the term "insurance adjustment organization" includes any organizations and persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term "person" includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof; and

(6) the term "Secretary" means the Secretary of Housing and Urban Development.

(b) The term "flood" shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this chapter shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this chapter (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Secretary may prescribe to achieve (with respect to such mudslides) the purposes of this chapter and the objectives of the program.

(c) The term "flood" shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this chapter shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this chapter (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Secretary may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this chapter and the objectives of the program. (As amended Pub. L. 93–234, title I, §§ 107, 108(b), Dec. 31, 1973, 87 Stat. 979, 980.)

AMENDMENTS

1973—Subsec. (b). Pub. L. 93–234, § 107, inserted "proximately" before "caused".

Subsec. (c). Pub. L. 93–234, § 108(b), added subsec. (c).

§ 4122. Studies of other natural disasters; cooperation and consultation with other departments and agencies.

(a) The Secretary is authorized to undertake such studies as may be necessary for the purpose of determining the extent to which insurance protection against earthquakes or any other natural disaster perils, other than flood, is not available from public or private sources, and the feasibility of such insurance protection being made available.

(b) Studies under this section shall be carried out, to the maximum extent practicable, with the cooperation of other Federal departments and agencies and State and local agencies, and the Secretary is authorized to consult with, receive information from, and enter into any necessary agreements or other arrangements with such other Federal departments and agencies (on a reimbursement basis) and such State and local agencies. (Pub. L. 90–448, title XIII, § 1371, Aug. 1, 1968, 82 Stat. 588.)

§ 4123. Advance payments.

Any payments under this chapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine. (Pub. L. 90–448, title XIII, § 1372, Aug. 1, 1968, 82 Stat. 589.)

§ 4124. Applicability of Government Corporation Control Act.

The provisions of the Government Corporation Control Act shall apply to the program authorized under this chapter to the same extent as they apply to wholly owned Government corporations. (Pub. L. 90–448, title XIII, § 1373, Aug. 1, 1968, 82 Stat. 589.)

§ 4125. Finality of certain financial transactions.

Notwithstanding the provisions of any other law—

(1) any financial transaction authorized to be carried out under this chapter, and

(2) any payment authorized to be made or to be received in connection with any such financial transaction,

shall be final and conclusive upon all officers of the Government. (Pub. L. 90–448, title XIII, § 1374, Aug. 1, 1968, 82 Stat. 589.)

§ 4126. Administrative expenses.

Any administrative expenses which may be sustained by the Federal Government in carrying out the flood insurance program authorized under this chapter may be paid out of appropriated funds.

(Pub. L. 90–448, title XIII, § 1375, Aug. 1, 1968, 82 Stat. 589.)

§ 4127. Authorization of appropriations; availability.

(a) There are hereby authorized to be appropriated such sums as may from time to time be necessary to carry out this chapter, including sums—

(1) to cover administrative expenses authorized under section 4126 of this title;

(2) to reimburse the National Flood Insurance Fund established under section 4017 of this title for—

(A) premium equalization payments under section 4054 of this title which have been made from such fund; and

(B) reinsurance claims paid under the excess loss reinsurance coverage provided under section 4055 of this title; and

(3) to make such other payments as may be necessary to carry out the purposes of this chapter.

(b) All such funds shall be available without fiscal year limitation.

(c) There are authorized to be appropriated for studies under this title not to exceed $100,000,000 for the fiscal year 1977. (Pub. L. 90–448, title XIII, § 1376, Aug. 1, 1968, 82 Stat. 589; amended Pub. L. 94–375, § 14(c), Aug. 3, 1976, 90 Stat. 1075.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–375 added subsec. (c).

§ 4128. Rules and regulations.

(a) The Secretary is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction, repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions, shall, in cooperation with the Secretary, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act. (Pub. L. 93–234, title II, § 205, Dec. 31, 1973, 87 Stat. 983.)

21. National Water Commission Act

Pub. L. 90–515 (82 Stat. 868)

Pub. L. 90–515, Sept. 26, 1968, 82 Stat. 868, provided:

"[SEC. 1. SHORT TITLE.] This Act may be cited as the 'National Water Commission Act.'

"SEC. 2. [MEMBERSHIP; COMPENSATION; EXECUTIVE DIRECTOR.] (a) There is established the National Water Commission (hereinafter referred to as the 'Commission').

"(b) The Commission shall be composed of seven members who shall be appointed by the President and serve at his pleasure. No member of the Commission shall, during his period of service on the Commission, hold any other position as an officer or employee of the United States, except as a retired officer or retired civilian employee of the United States.

"(c) The President shall designate a Chairman of the Commission (hereinafter referred to as the 'Chairman') from among its members.

"(d) Members of the Commission may each be compensated at the rate of $100 for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C., sec. 5703, for persons in the Government service employed intermittently.

"(e) The Commission shall have an Executive Director, who shall be appointed by the Chairman with the approval of the Commission and shall be compensated at the rate determined by the U.S. Civil Service Commissioners. The Executive Director shall have such duties and responsibilities as the Chairman may assign.

"SEC. 3. [DUTIES; REPORTS; TERMINATION.] (a) The Commission shall (1) review present anticipated national water resource problems, making such projections of water requirements as may be necessary and identifying alternative ways of meeting these requirements—giving consideration, among other things, to conservation and more efficient use of existing supplies, increased usability by reduction of pollution, innovations to encourage the highest economic use of water, interbasin transfers, and technological advances including, but not limited to, desalting, weather modification, and waste water purification and reuse; (2) consider economic and social consequences of water resource development, including, for example, the impact of water resource development on regional economic growth, on institutional arrangements, and on esthetic values affecting the quality of life of the American people; and (3) advise on such specific water resource matters as may be referred to it by the President and the Water Resources Council.

"(b) The Commission shall consult with the Water Resources Council regarding its studies and shall furnish its proposed reports and recommendations to the Council for review and comment. The Commission shall submit simultaneously to the President and to the United States Congress such interim and final reports as it deems appropriate, and the Council shall submit simultaneously to the President and to the United States Congress its views on the Commission's reports. The President shall transmit the Commission's final report to the Congress together with such comments and recommendations for legislation as he deems appropriate.

"(c) The Commission shall terminate not later than five years from the effective date of this Act [September 26, 1968].

"SEC. 4. [POWERS OF THE COMMISSION.] (a) The Commission may (1) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it may deem advisable; (2) acquire, furnish, and equip such office space as is necessary; (3) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States; (4) without regard to the civil service laws and regulations and without regard to 5 U.S.C., ch. 51, employ and fix the compensation of such personnel as may be necessary to carry out the functions of the Commission; (5) procure services as authorized by 5 U.S.C., sec. 3109, at rates not to exceed $100 per diem for individuals; (6) purchase, hire, operate, and maintain passenger motor vehicles; (7) enter into contracts or agreements for studies and surveys with public and private organizations and transfer funds to Federal agencies and river basin commissions created pursuant to title II of the Water Resources Planning Act [section 1962b of this title] to carry out such aspects of the Commission's functions as the Commission determines can best be carried out in that manner; and (8) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this title.

"(b) Any member of the Commission is authorized to administer oaths when it is determined by a majority of the Commission that testimony shall be taken or evidence received under oath

"SEC. 5. [POWERS AND DUTIES OF CHAIRMAN.] (a) Subject to general policies adopted by the Commission, the Chairman shall be the chief executive of the Commission and shall exercise its executive and administrative powers as set forth in section 4(a)(2) through section 4(a)(8).

"(b) The Chairman may make such provision as he shall deem appropriate authorizing the performance of any of his executive and administrative functions by the Executive Director or other personnel of the Commission.

"SEC. 6. [OTHER FEDERAL AGENCIES.] (a) The Commission may, to the extent practicable, utilize the services of the Federal water resource agencies.

"(b) Upon request of the Commission, the head of any Federal department or agency or river basin commission created pursuant to title II of the Water Resources Planning Act [section 1962b of this title] is authorized (1) to furnish to the Commission, to the extent permitted by law and within the limits of available funds, including funds transferred for that purpose pursuant to section 4(a)(7) of this Act, such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with this Commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

"(c) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services: *Provided*, That the regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C., sec. 5514) shall apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of said Administrator for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Commission: *And provided further*, That the Commission shall not be required to prescribe such regulations.

"SEC. 7. [AUTHORIZATION OF APPROPRIATIONS.] There are hereby authorized to be appropriated not to exceed $5,000,000 to carry out the purposes of this Act."

22. Ocean Dumping

33 U.S.C. 1401–1444

(See Ocean Dumping under title VII *Oceanography*)

23. Oil Pollution Act of 1961

33 U.S.C. 1001–1015

(See Oil Pollution Act of 1961 under title VIII *Oceanography*)

24. Pollution Control in Navigable Waters

33 U.S.C. 1251–1376

(See Pollution Control in Navigable Waters under title XI *Water Pollution*)

25. Pollution of the Sea by Oil

33 U.S.C. 1001–1015

(See Oil Pollution Act under title VII *Oceanography*)

26. Presidential Study of Water Resources

42 U.S.C. 1962d–17(c)

(c) Water and related resources projects; Presidential study; scope of study; report to Congress.

The President shall make a full and complete investigation and study of principles and standards for planning and evaluating water and related resources projects. Such investigation and study shall include, but not be limited to, consideration of enhancing regional economic development, the quality of the total environment including its protection and improvement, the well-being of the people of the

United States, and the national economic development, as objectives to be included in federally-financed water and related resources projects and in the evaluation of costs and benefits attributable to such projects, as intended in section 1962–2 of this title, the interest rate formula to be used in evaluating and discounting future benefits for such projects, and appropriate Federal and non-Federal cost sharing for such projects. He shall report the results of such investigation and study, together with his recommendations, to Congress not later than one year after funds are first appropriated to carry out this subsection. (Pub. L. 93–251, title I, § 80, Mar. 7, 1974, 88 Stat. 34.)

27. Safe Drinking Water

42 U.S.C. 300f

PART A.—DEFINITIONS

§ 300f. Definitions.

For purposes of this subchapter:

(1) The term "primary drinking water regulation" means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1 of this title; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

(2) The term "secondary drinking water regulation" which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary accordingly to geographic and other circumstances.

(3) The term "maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) The term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(5) The term "supplier of water" means any person who owns or operates a public water system.

(6) The term "contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(8) The term "Agency" means the Environmental Protection Agency.

(9) The term "Council" means the National Drinking Water Advisory Council established under section 300j–5 of this title.

(10) The term "municipality" means a city, town, or other public body created by or pursuant to State law, or an Indian tribal organization authorization authorized by law.

(11) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(12) The term "person" means an individual, corporation, company, association, partnership, State, or municipality.

(13) The term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. (July 1, 1944, ch. 373, title XIV, § 1401, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1616, and amended Pub. L. 94–317, § 301(2), June 23, 1976, 90 Stat. 707; Pub. L. 94–

484, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325.)

AMENDMENTS

1976—Paragraph (13). Pub. L. 94–317 added paragraph (13).

Pub. L. 94–484 added "the Northern Mariana Islands" in paragraph (13).

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93–523 provided that:

"(a) The Administrator of the Environmental Protection Agency shall (after consultation with the Secretary of Agriculture and the several States) enter into arrangements with public or private entities as may be appropriate to conduct a survey of the quantity, quality, and availability of rural drinking water supplies. Such survey shall include, but not be limited to, the consideration of the number of residents in each rural area—

"(1) presently being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system;

"(2) presently having limited or otherwise inadequate access to drinking water;

"(3) who, due to the absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard; and

"(4) who have experienced incidents of chronic or accute illness, which may be attributed to the absence of inadequacy of a drinking water supply system.

"(b) Such survey shall be completed within eighteen months of the date of enactment of this Act [Dec. 16, 1974] and a final report thereon submitted, not later than six months after the completion of such survey, to the President for transmittal to the Congress. Such report shall include recommendations for improving rural water supplies.

"(c) There are authorized to be appropriated to carry out the provisions of this section $1,000,000 for the fiscal year ending June 30, 1975; $2,000,000 for the fiscal year ending June 30, 1976; and $1,000,000 for the fiscal year ending June 30, 1977."

PART B.—PUBLIC WATER SYSTEMS

§ 300g. Coverage.

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, § 1411, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1662.)

§ 300g–1. National drinking water regulations.

(a) Interim primary regulations; publication of proposed regulations; promulgation; effective date; amendments.

(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.

(b) Recommended maximum contaminant levels and list of contaminants with adverse effect but of undetermined levels: publication of proposals in Federal Register and establishment of recommended levels and list; revised primary regulations: publication of proposed regulations in Federal Register, promulgation, requirements, "feasible" defined, amendments, triennial review, effective date, supersedure of interim primary regulations.

(1)(A) Within 10 days of the date the report on the study conducted pursuant to subsection (e) of this section is submitted to Congress, the Administrator shall publish in the Federal Register, and provide opportunity for comment on, the—

(i) proposals in the report for recommended maximum contaminant levels for national primary drinking water regulations, and

(ii) list in the report of contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(B) Within 90 days after the date the Administrator makes the publication required by subparagraph (A), he shall by rule establish recommended maximum contaminant levels for each contaminant which, in his judgment based on the report on the study conducted pursuant to subsection (e) of this section, may have any adverse effect on the health of persons. Each such recommended maximum contaminant level shall be set at a level at which, in the Administrator's judgment based on such report, no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. In addition, he shall, on the basis of the report on the study conducted pursuant to subsection (e) of this section, list in the rules under this subparagraph any contaminant the level of which cannot be accurately enough measured in drinking water to establish a recommended maximum contaminant level and which may have any adverse effect on the health of persons. Based on information available to him, the Administrator may by rule change recommended levels established under this subparagraph or change such list.

(2) On the date the Administrator establishes pursuant to paragraph (1)(B) recommended maximum contaminant levels he shall publish in the Federal Register proposed revised national primary drinking water regulations (meeting the requirements of paragraph (3)). Within 180 days after the date of such proposed regulations, he shall promulgate such revised drinking water regulations with such modifications as he deems appropriate.

(3) Revised national primary drinking water regulations promulgated under paragraph (2) of this subsection shall be primary drinking water regulations which specify a maximum contaminant level or require the use of treatment techniques for each contaminant for which a recommended maximum contaminant level is established or which is listed in a rule under paragraph (1)(B). The maximum contaminant level specified in a revised national primary drinking water regulation for a contaminant shall be as close to the recommended maximum contaminant level established under paragraph (1)(B) for such contaminant as is feasible. A required treatment technique for a contaminant for which a recommended maximum contaminant level has been established under paragraph (1)(B) shall reduce such contaminant to a level which is as close to the recommended maximum contaminant level for such contaminant as is feasible. A required treatment technique for a contaminant which is listed under paragraph (1)(B) shall require treatment necessary in the Administrator's judgment to prevent known or anticipated adverse effects on the health of persons to the extent feasible. For purposes of this paragraph, the term "feasible" means feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds are generally available (taking cost into consideration).

(4) Revised national primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years.

(5) Revised national primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) of this section shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.

(6) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments.

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations.

Regulations under this section shall be prescribed in accordance with section 553 of Title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Study; maximum contaminant level determination; adverse effect of contaminants of undetermined levels; report to Congress; funds.

(1) The Administrator shall enter into appropriate arrangements with the National Academy of Sciences (or with another independent scientific organization if appropriate arrangements cannot be made with such Academy) to conduct a study to determine (A) the maximum contaminant levels which should be recommended under subsection (b)(2) of this section in order to protect the health of persons from any known or anticipated adverse effects, and (B) the existence of any contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(2) The result of the study shall be reported to Congress no later than 2 years after December 16, 1974. The report shall contain (A) a summary and evaluation of relevant publications and unpublished studies; (B) a statement of methodologies and assumptions for estimating the levels at which adverse health effects may occur; (C) a statement of methodologies and assumptions for estimating the margin of safety which should be incorporated in the national primary drinking water regulations; (D) proposals for recommended maximum contaminant levels for national primary drinking water regulations, based on the methodologies, assumptions, and studies referred to in clauses (A), (B), and (C) and in paragraph (4); (E) a list of contaminants the level of which in drinking water cannot be determined but which may have an adverse effect on the health of persons; and (F) recommended studies and test protocols for future research on the health effects of drinking water contaminants, including a list of the major research priorities and estimated costs necessary to conduct such priority research.

(3) In developing its proposals for recommended maximum contaminant levels under paragraph (2)(D) the National Academy of Sciences (or other organization preparing the report) shall evaluate and explain (separately and in composite) the impact of the following considerations:

(A) The existence of groups or individuals in the population which are more susceptible to adverse effects than the normal healthy adult.

(B) The exposure to contaminants in other media than drinking water (including exposures in food, in the ambient air, and in occupational settings) and the resulting body burden of contaminants.

(C) Synergistic effects resulting from exposure to or interaction by two or more contaminants.

(D) The contaminant exposure and body burden levels which alter physiological function or structure in a manner reasonably suspected of increasing the risk of illness.

(4) In making the study under this subsection, the National Academy of Sciences (or other organization) shall collect and correlate (A) morbidity and

mortality data and (B) monitored data on the quality of drinking water. Any conclusions based on such correlation shall be included in the report of the study.

(5) Neither the report of the study under this subsection nor any draft of such report shall be submitted to the Office of Management and Budget or to any other Federal agency (other than the Environmental Protection Agency) prior to its submission to Congress.

(6) Of the funds authorized to be appropriated to the Administrator by this subchapter, such amounts as may be required shall be available to carry out the study and to make the report directed by paragraph (2) of this subsection. (July 1, 1944, ch. 373, title XIV, § 1412, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1662.)

§ 300g–2. State primary enforcement responsibility; regulations; notice and hearing; publication in Federal Register; applications.

(a) For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations which (A) in the case of the period beginning on the date the national interim primary drinking water regulations are promulgated under section 300g–1 of this title and ending on the date such regulations take effect are no less stringent than such regulations, and (B) in the case of the period after such effective date are no less stringent than the interim and revised national primary drinking water regulations in effect under such section;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

(b)(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial. (July 1, 1944, ch. 373, title XIV, § 1413, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1665.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g–3, 300j–2, 300j–7 of this title.

§ 300g–3. Failure of State to assure enforcement of drinking water regulations.

(a) Notice to State; public notice; civil action, conditions.

(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 300g–2(a) of this title) that any public water system—

(i) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

(ii) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with such regulation or requirement by the earliest feasible time.

(B) If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of the notice given pursuant to subparagraph (A), he shall give public notice of such finding and request the State to report within fifteen days from

the date of such public notice as to the steps being taken to bring the system into compliance (including reasons for anticipated steps to be taken to bring the system into compliance and for any failure to take steps to bring the system into compliance). If—

(i) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to subparagraph (A); and

(ii) (α) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence; or

(β) The State submits such report within such period but the Administrator, after considering the report, determines that the State abused its discretion in carrying out primary enforcement responsibility for public water systems by both—

(I) failing to implement by such sixtieth day adequate procedures to bring the system into compliance by the earliest feasible time, and

(II) failing to assure by such day the provision through alternative means of safe drinking water by the earliest feasible time;

the Administrator may commence a civil action under subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

(A) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

(B) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he may commence a civil action under subsection (b) of this section.

(b) Judicial determinations in appropriate Federal district courts; civil penalties; separate violations.

The Administrator may bring a civil action in the appropriate United States district court to require compliance with a national primary drinking water regulation or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g–4 or 300g–5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a), or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgment as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a willful violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $5,000 for each day in which such violation occurs.

(c) Notice of owner or operator of public water system to persons served; regulations for form and manner of notice; penalties.

Each owner or operator of a public water system shall give notice to the persons served by it—

(1) of any failure on the part of the public water system to—

(A) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation, or

(B) perform monitoring required by section 300j–4(a) of this title, and

(2) if the public water system is subject to a variance granted under section 300g–4(a)(1)(A) or 300g–4(a)(2) of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g–5 of this title, of—

(A) the existence of such variance or exemption, and

(B) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

The Administrator shall by regulation prescribe the form and manner for giving such notice. Such notice shall be given not less than once every 3 months, shall be given by publication in a newspaper of general circulation serving the area served by each such water system (as determined by the Administrator), shall be furnished to the other communications media serving such area, and shall be furnished to the communications media as soon as practicable after the discovery of the violation with respect to which the notice is required. If the water bills of a public water system are issued more often than once every 3 months, such notice shall be included in at least one water bill of the system every 3 months, and if a public water system issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system. Any person who willfully violates this subsection or regulations thereunder shall be fined not more than $5,000.

(d) Notice of noncompliance with secondary drinking water regulations.

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public

water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected.

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system.

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media. (July 1, 1944, ch. 373, title XIV, § 1414, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1666.)

§ 300g–4. Variances.

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques.

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation despite application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration). Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe within one year of the date the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of a national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the

Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance on schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alter-

native treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement.

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may be enforced under section 300g–3 of this title as if such schedule or other requirement was part of a national primary drinking water regulation.

(c) Applications for variances; regulations: reasonable time for acting.

If an application for a variance under subsection (a) of this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) "Treatment technique requirement" defined.

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b)(3) of this title. (July 1, 1944, ch. 373, title XIV, § 1415, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1669.)

§ 300g–5. Exemptions.

(a) Requisite findings.

A State which has primary enforcement responsibility may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement.

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, and

(3) the granting of the exemption will not result in an unreasonable risk to health.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions.

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, within one year of the date the exemption is granted, a schedule for—

(A) compliance (including increments of progress) by the public water system with each containment level requirement and treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each containment, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but (except as provided in subparagraph (B))—

(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the interim national primary drinking water regulations promulgated under section 300g–1(a) of this title, not later than January 1, 1981; and

(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, not later than seven years after the date such requirement takes effect.

(B) Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1983; and

(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.

(3) Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g–3 of

this title as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption.

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action.

(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his finding. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

(i) identify each exempt public water system with respect to which the finding was made,

(ii) specify the reasons for the finding, and

(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on a notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined.

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b)(3) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility.

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations: reasonable time for acting.

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission. (July 1,

1944, ch. 373, title XIV, § 1416, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1672.)

PART C.—PROTECTION ON UNDERGROUND SOURCES OF DRINKING WATER

§ 300h. Regulations for State programs.

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations.

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of Title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions.

(1) Regulations under subsection (a) of this section for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h–1 of this title—

(A) shall prohibit, effective three years after December 16, 1974, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 300j–6 (b) of this title, to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(c) Temporary permits; notice and hearing.

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the

injection on the public health.

(d) "Underground injection" defined; underground injection endangerment of drinking water sources.

For purposes of this part:

(1) The term "underground injection" means the subsurface emplacement of fluids by well injection.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(July 1, 1944, ch. 373, title XIV, § 1421, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1674.)

§ 300h–1. State primary enforcement responsibility.

(a) List of States in need of a control program; amendment of list.

Within 180 days after December 16, 1974, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing.

(1)(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which, contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) Program by Administrator for State without primary enforcement responsibility; restrictions.

If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2) of this section, if the Administrator determines under subsection (b)(3) of this section that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A) of this section, or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1) of this section, the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 300h(b) of this title. Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) "Applicable underground injection control program" defined.

For purposes of this subchapter, the term "applicable underground injection control program" with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b) of this section, or (2) which has been prescribed by the Administrator under subsection (c) of this section. (July 1, 1944, ch. 373, title XIV, § 1422, as added Dec. 16, 1974, Pub. L. 93X 523, § 2(a), 88 Stat. 1676.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h, 300h–2, 300j–2, 300j–4 of this title.

§ 300h-2. Failure of State to assure enforcement of program.

(a) Notice to State and violator; public notice; civil action, conditions.

(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 300h-1(b)(3) of this title) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of such notice, he shall give public notice of such finding and request the State to report within 15 days after the date of such public notice as to the steps being taken to bring such person into compliance with such requirement (including reasons for anticipated steps to be taken to bring such person into compliance with such requirement and for any failure to take steps to bring such person into compliance with such requirement). If—

(A) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to the first sentence of this paragraph, and

(B)(i) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence, or

(ii) the State submits such report within such period but the Administrator, after considering the report, determines that by failing to take necessary steps to bring such person into compliance by such sixtieth day the State abused its discretion in carrying out primary enforcement responsibility for underground water sources.

the Administrator may commence a civil action under subsection (b)(1) of this section.

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, he may commence a civil action under subsection (b)(1) of this section.

(b) Judicial determinations in appropriate Federal district courts; civil penalties; separate violations; penalties for willfull violations.

(1) When authorized by subsection (a) of this section, the Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any requirement of an applicable underground injection control program. The court may enter such judgment as protection of public health may require, including, in the case of an action brought against a person who violates an applicable requirement of an underground injection control program and who is located in a State which has primary enforcement responsibility for underground water sources, the imposition of a civil penalty of not to exceed $5,000 for each day such person violates such requirement after the expiration of 60 days after receiving notice under subsection (a)(1) of this section.

(2) Any person who violates any requirement of an applicable underground injection control program to which he is subject during any period for which the States does not have primary enforcement responsibility for underground water sources (A) shall be subject to a civil penalty of not more than $5,000 for each day of such violation, or (B) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (B), be fined not more than $10,000 for each day of such violation.

(c) State authority to adopt or enforce laws or regulations respecting underground injection unaffected.

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter. (July 1, 1944, ch. 373, title XIV, § 1423, as added Dec. 16, 1974, Pub. L. 93-523, § 2(a), 88 Stat. 1677.)

§ 300h-3. Interim regulation of underground injections.

(a) Necessity for well operation permit; designation of one aquifer areas.

(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b) of this section. The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) Well operation permits; publication in Federal Register; notice and hearing; issuance or denial; conditions for issuance.

(1) During the period beginning on the date an area is designated under subsection (a) of this section and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such

a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceeding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) of this section only, if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Civil penalties; separate violations; penalties for willful violations; temporary restraining order or injunction.

Any person who operates a new underground injection well in violation of subsection (b) of this section, (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b) of this section, he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) "New underground injection well" defined.

For purposes of this section, the term "new underground injection well" means an underground injection well whose operation was not approved by appropriate State and Federal agencies before December 16, 1974.

(e) Areas with one aquifer; publication in Federal Register; commitments for Federal financial assistance.

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer. (July 1, 1944, ch. 373, title XIV, § 1424, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1678.)

Part D.—Emergency Powers

§ 300i. Emergency powers.

(a) Actions authorized against imminent and substantial endangerment to health.

Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses.

Any person who willfully violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or failure to comply continues. (July 1, 1944, ch. 373, title XIV, § 1431, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a) 88 Stat. 1680.)

Part E.—General Provisions

§ 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water.

(a) Certification of need application.

If any person who uses chlorine activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator

for a certification (hereinafter in this section referred to as a "certification of need") that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b) Application requirements; publication in Federal Register; waiver; certification, issuance or denial.

(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) Certification of need; issuance; executive orders; implementation of orders; equitable apportionment of orders; factors considered.

(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f) of this section, any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) Breach of contracts; defense.

There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(e) Penalties for noncompliance with orders; temporary restraining orders and preliminary or permanent injunctions.

(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be fined not more than $5,000 for each

such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1) of this section, he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provision of such order.

(f) Termination dates.

No certification of need or order issued under this section may remain in effect—

(1) for more than one year, or

(2) after June 30, 1977,

whichever occurs first. (July 1, 1944, ch. 373, title XIV, § 1441, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1680.)

§ 300j–1. Research, technical assistance, information, training of personnel.

(a) Specific powers and duties of Administrator.

(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 300j–2(c)(1) of this title).

(3) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 300g–1 of this title.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after December 16, 1974, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Adminisrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after December 16, 1974, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(b) Other powers and duties of Administrator.

In carrying out this subchapter, the Administrator is authorized to—

(1) collect and make vailable information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter;

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for oc-

cupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j–2(d) of this title)).

(c) Authorization of appropriations.

There are authorized to be appropriated to carry out the provisions of this section $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; and $35,000,000 for the fiscal year ending June 30, 1977. (July 1, 1944, ch. 373, title XIV, § 1442, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1682.)

§ 300j–2. Grants for State programs.

(a) Public water system supervision programs; applications for grants; allotment of sums; authorization of appropriations.

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant fatcors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): *Provided,* That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: *And provided further,* That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, and $25,000,000 for the fiscal year ending June 30, 1977.

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations.

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within two years from the date of such grant an underground water source protection, and

(B) will, within such two years, assume primary enforcement responsibility for underground water sources within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's cost (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, an underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, and $7,500,000 for the fiscal year ending June 30, 1977.

(c) Definitions.

For purposes of this section:

(1) The term "public water system supervision program" means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title) which are no less stringent than the national primary drinking water regulations under

section 300g–1 of this title, and for keeping records and making reports required by section 300g–2 (a)(3) of this title.

(2) The term "underground water source protection program" means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 300h of this title and for keeping records and making reports required by section 300h–1(b)(1)(A)(ii) of this title.

(July 1, 1944, ch. 373, title XIV, § 1443, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1684.)

§ 300j–3. Special project grants and guaranteed loans.

(a) Special study and demonstration project grants.

The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations.

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations.

For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations.

The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations (including interim regulations) prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection. (July 1, 1944, ch. 373, title XIV, § 1444, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1685.)

§ 300j–4. Records and inspections.

(a) Persons subject to requirements.

Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g–1 of this title or to an applicable underground injection control program (as defined in section 300h–1(c) of this title), who is or may be subject to the permit requirement of section 300h–3 of this title or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter or in administering any program of financial assistance under this subchapter

(b) Entry of establishments, facilities, or other property; inspections; conduct of certain tests; audit and examination of records; entry restrictions; prohibition against informing of a proposed entry.

(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to a national primary drinking water regulation prescribed under section 300g–1 of this title or applicable underground injection control program (or person in charge of any of the property of such supplier or other person), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other

person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) of this section or which are pertinent to any financial assistance under this subchapter.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Penalty.

Whoever fails or refuses to comply with any requirement of subsection (a) of this section or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) of this section may be fined not more than $5,000.

(d) Confidential information; trade secrets and secret processes; information disclosure; "information required under this section" defined.

(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of Title 18. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this subchapter or to committees of the Congress, or when relevant in any proceeding under this subchapter, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term "information required under this section" means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) "Grantee" and "person" defined.

For purposes of this section, (1) the term "grantee" means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this subchapter, and (2) the term "person" includes a Federal agency. (July 1, 1944, ch. 373, title XIV, § 1445, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1686.)

§ 300j–5. National Drinking Water Advisory Council.

(a) Establishment; membership; representation of interests; term of office, vacancies; reappointment.

There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after December 16, 1974, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) Functions.

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses.

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While

away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of Title 5.

(d) Advisory committee termination provision inapplicable.

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council. (July 1, 1944, ch. 373, title XIV, § 1446, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1688.)

§ 300j–6. Federal agencies.

(a) Compliance with national primary drinking water regulations; applicable underground injection control programs: compliance with programs, recordkeeping, and reports.

Each Federal agency having jurisdiction over any federally owned or maintained public water system shall comply with all national primary drinking water regulations in effect under section 300g–1 of this title, and ecah Federal agency shall comply with any applicable underground injection control program, and shall keep such records and submit such reports as may be required under such program.

(b) Waiver; national security; records available in judicial proceedings; publication in Federal Register; notice to Congressional Committees.

The Administrator shall waive compliance with subsection (a) of this section upon request of the Secretary of Defense and upon a determination by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this subchapter. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the request of the Secretary of Defense, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the Armed Services Committee of the Senate and House of Representatives. (July 1, 1944, ch. 373, title XIV, § 1447, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1688.)

§ 300j–7. Judicial review.

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy.

A petition for review of—

(1) action of the Administrator in promulgating any national primary drinking water regulation under section 300g–1 of this title, any regulation under section 300g–2(b)(1) of this title, any regulation under section 300g–3(c) of this title, any regulation for State underground injection control programs under section 300h of this title, or any general regulation for the administration of this subchapter may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and

(2) action of the Administrator in promulgating any other regulation under this subchapter issuing any order under this subchapter, or making any determination under this subchapter may be filed only in the United States court of appeals for the appropriate circuit.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy.

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g–4 or 300g–5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination.

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were

reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence. July 1, 1944, ch. 373, title XIV, § 1448, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1689.)

§ 300j–8. Citizen's civil actions.

(a) Persons subject to civil actions; jurisdiction of enforcement proceedings.

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) Conditions for commencement of civil action; notice.

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) of this section to require a State to prescribe a schedule under section 300g–4 or 300g–5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) Intervention of right.

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond.

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law or other relief available.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. (July 1, 1944, ch. 373, title XIV, § 1449, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1690.)

§ 300j–9. General provisions.

(a) Regulations; delegation of functions.

(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this subchapter.

(2) The Administrator may delegate any of his functions under this subchapter (other than prescribing regulations) to any officer or employee of the Agency.

(b) Utilization of officers and employees of Federal agencies.

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this subchapter.

(c) Assignment of Agency personnel to State or interstate agencies.

Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this subchapter.

(d) Payments of grants; adjustments; advances; reimbursement; installments; conditions; eligibility for grants; "nonprofit agency or institution" defined.

(1) The Administrator may make payments of grants under this subchapter (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term "nonprofit agency or institution" means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) Labor standards.

The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; sections 276a to 276a–5 of Title 40). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of Title 40.

(f) Appearance and representation of Administrator through Attorney General or attorney appointees.

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this subchapter to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) Authority of Administrator under other provisions unaffected.

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

(h) Reports to Congressional Committees; review by Office of Management and Budget: submittal of comments to Congressional Committees.

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; expedition of proceedings; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations.

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary

shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of Title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this paragraph shall be heard and decided expeditiously.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of Title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this subchapter. (July 1, 1944, ch. 373, title XIV, § 1450, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1691.)

28. Saline Water Conservation Act of 1971

42 U.S.C. 1959–1959h

Sec.

§ 1959. Congressional findings and policy on conversion of saline water.

The Congress in consideration of the Federal responsibility for water resource conservation by means of comprehensive planning, planning and construction of water resource development projects,

administration of the navigable waterways, and maintenance of water quality standards finds that the technology for the conversion of saline and other chemically contaminated waters is vital to all these areas of responsibility. It is the policy of the Congress, therefore, to provide for the development and demonstration of practicable means to convert saline and other chemically contaminated water to a quality suitable for municipal, industrial, agricultural, and other beneficial uses. (Pub. L. 92-60, § 2, July 29, 1971, 85 Stat. 159.)

SHORT TITLE

Section 1 of Pub. L. 92-60 provided: "That this Act [which enacted sections 1959 to 1959h and repealed sections 1951 to 1958 of this title] may be cited as 'The Saline Water Conversion Act of 1971'."

§ 1959a. Duties of Secretary of Interior.

The Secretary of the Interior is authorized and directed to—

(a) Research and studies for development of processes and equipment for converting saline water.

conduct, encourage, and promote basic scientific research and fundamental studies to develop effective and economical processes and equipment for the purpose of converting saline and other chemically contaminated water into water suitable for beneficial consumptive uses;

(b) Publication of findings from research and studies for application to other than water treatment matters.

pursue the findings of research and studies authorized by this chapter having potential practical applications to matters other than water treatment to the stage that such findings can be published in an effective form for utilization by others;

(c) Engineering and technical work for development of desalting processes and plant design concepts for scaled demonstrations.

conduct engineering and technical work including the design, construction, and testing of pilot plants, test beds, and modules to develop desalting processes and plant design concepts to the point of demonstration on a practical scale;

(d) Methods for recovery and marketing of byproducts as offsets against treatment costs; reduction of impact on environment from discharge of brine into waters.

study methods for the recovery and marketing of byproducts resulting from the desalination of water to offset the costs of treatment and to reduce impact on the environment from the discharge of brines into lakes, streams, and other waters; and

(e) Economic studies and surveys on water production costs; information concerning relation of desalting to other aspects of comprehensive water resource planning: coordination of studies and water resource planning.

undertake economic studies and surveys to determine present and prospective costs of producing water for beneficial consumptive purposes in various parts of the United States by the saline water processes as compared with other standard methods, and by means of mathematical models or other methodologies prepare and maintain information concerning the relation of desalting to other aspects of State, regional, and national comprehensive water resource planning: *Provided*, That in carrying out this function, the Secretary shall coordinate these studies with planning being performed under the provisions of the Water Resources Planning Act, as amended.

(Pub. L. 92-60, § 3, July 29, 1971, 85 Stat. 159.)

§ 1959b. Additional duties of Secretary of Interior.

(a) Prototype plants; preliminary investigations.

The Secretary is authorized and directed to conduct preliminary investigations and to explore potential cooperative agreements with non-Federal utilities and governmental entities in order to develop recommendations for Federal participation in the construction, operation, and maintenance of prototype plants utilizing desalting technologies for the production of water for consumptive use.

(b) Report to Congress; recommendations respecting construction of large-scale prototype desalting plant; criteria.

The Secretary is authorized and directed to report to the President and to the Congress, not later than one year after July 29, 1971, his recommendation as to the best opportunity for the early construction of a large-scale prototype desalting plant. In making his recommendation, the Secretary shall consider the following—

(i) plant size and process type best suited, within the presently available technology, to demonstrate the practicability of construction and operation of a large-scale plant for water supply on a reliable basis, and to provide information on the management problems and economics of such operation;

(ii) availability of operating entities or utilities willing to enter, and capable of entering, into agreements and contracts to provide a market for water and an operating agency for the plants;

(iii) availability of entities or utilities willing to enter, and capable of entering, into agreements and contracts to provide an energy source for the plants;

(iv) availability of a site, the environmental implications of the energy source, and brine disposal problems; and

(v) need for the development of new water sources in the area.

(c) Federal agencies; assistance.

In carrying out the provisions of this section, the Secretary shall utilize the expertise of the water and power marketing agencies of the Department of the Interior or of other Federal agencies to insure that the recommended prototype plant and the supporting agreements are fully integrated and compatible with the water and power systems of the region.

(d) State and other public agencies; assistance.

The Secretary is authorized to accept financial

and other assistance from any State or public agency in connection with studies or surveys relating to saline water conversion problems and facilities and to enter into contracts with respect to such assistance. (Pub. L. 92–60, § 4, July 29, 1971, 85 Stat. 160.)

§ 1959c. Powers of Secretary of Interior.

In carrying out his functions under this chapter, the Secretary may—

(a) make grants to educational institutions and scientific organizations, and enter into contracts with such institutions and organizations and with industrial or engineering firms;

(b) acquire the services of chemists, physicists, engineers, and other personnel by contract or otherwise;

(c) utilize the facilities of Federal scientific laboratories;

(d) establish and operate necessary facilities and test sites to carry on the continuous research, testing, development, and programing necessary to effectuate the purposes of this chapter;

(e) acquire secret processes, technical data, inventions, patent applications, patents, licenses, land and interests in land (including water rights), plants and facilities, and other property or rights by purchase, license, lease, or donation;

(f) assemble and maintain pertinent and current scientific literature, both domestic and foreign, and issue bibliographical data with respect thereto;

(g) cause on-site inspections to be made of promising projects, domestic and foreign, and, in the case of projects located in the United States, cooperate and participate in their development when the purposes of this chapter will be served thereby;

(h) foster and participate in regional, national, and international conferences relating to saline water conversion;

(i) coordinate, correlate, and publish information with a view to advancing the development of low-cost saline water conversion projects; and

(j) cooperate with other Federal departments and agencies, with State and local departments, agencies and instrumentalities, and with interested persons, firms, institutions, and organizations.

(Pub. L. 92–60, § 5, July 29, 1971, 85 Stat. 160.)

§ 1959d. Saline water conversion program and other Federal programs.

(a) Coordination or joint conduct of activities with Department of Defense.

Research and development activities undertaken by the Secretary shall be coordinated or conducted jointly with the Department of Defense to the end that developments under this chapter which are primarily of a civil nature will contribute to the defense of the Nation and that developments which are primarily of a military nature will, to the greatest practicable extent compatible with military and security requirements, be available to advance the purposes of this chapter and to strengthen the civil economy of the Nation.

(b) Cooperation with Environmental Protection Agency.

The Secretary will cooperate with the Administrator of the Environmental Protection Agency to insure that research and development work performed under this chapter makes the fullest possible contribution to the improvement of processes and techniques for the treatment of saline and other chemically contaminated waters and to avoid the duplication of the experience, expertise, and data regarding desalting technologies which have been acquired in the performance of the Saline Water Conversion Act.

(c) Cooperation with other Federal agencies.

The Secretary shall cooperate fully with the Atomic Energy Commission, the Department of Health, Education, and Welfare, the Department of State, and other concerned agencies in the interest of achieving the objectives of this chapter.

(d) Research information and developments: availability to public; patent rights; rules and revisions of rules: publication in Federal Register.

All research within the United States contracted for, sponsored, cosponsored, or authorized under authority of this chapter, shall be provided for in such manner that all information, uses, products, processes, patents, and other developments resulting from such research developed by Government expenditure will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be available to the general public. This subsection shall not be so construed as to deprive the owner of any background patent relating thereto of such rights as he may have thereunder. Within six months of July 29, 1971, the Secretary shall publish rules in the Federal Register to give effect to the provisions of this subsection and shall subsequently publish all revisions in the same manner.

(e) Disposal of water and byproducts; disposition of moneys.

The Secretary may dispose of water and byproducts resulting from his operations under this chapter. All moneys received from dispositions under this section shall be paid into the Treasury as miscellaneous receipts except where such operations may be undertaken as a part of a Federal reclamation project in which case the financial provisions of Reclamation Law (32 Stat. 388 and Acts amendatory thereof and supplementary thereto) will govern.

(f) Alteration of existing water ownership and control law.

Nothing in this chapter shall be construed to alter existing law with respect to the ownership and control of water. (Pub. L. 92–60, § 6, July 29, 1971, 85 Stat. 161.)

§ 1959e. Rules and regulations.

The Secretary of the Interior may issue rules and regulations to effectuate the purposes of this chapter. (Pub. L. 92–60, § 7, July 29, 1971, 85 Stat. 162.)

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§ 1959f. Report to the President and Congress.

The Secretary shall submit to the President and to the Congress not later than December 31, 1975, a report on—

(i) the status of research and development work in progress under the provisions of section 1959a (a), (b), (c), and (d) of this title, along with a program for the orderly termination of these activities in accordance with section 1959h(b) of this title; and

(ii) the status of work in progress under the provisions of section 1959a(e) and section 1959b of this title along with the recommendations for the integration of these remaining functions within the on-going water resource programs of the Department of the Interior.

(Pub. L. 92–60, § 8, July 29, 1971, 85 Stat. 162.)

§ 1959g. Definitions.

As used in this chapter—

(a) the term "Secretary" means the Secretary of the Interior;

(b) the term "saline water" includes sea water, brackish water, mineralized ground or surface water, and irrigation return flows;

(c) the term "other chemically contaminated water" refers to waters which contain chemicals susceptible to removal by desalting processes;

(d) the term "United States" extends to and includes the District of Columbia, the Commonwealth of Puerto Rico, territories of American Samoa, Guam, and the Virgin Islands; and the provisions of this chapter shall also apply to the Trust Territory of the Pacific Islands;

(e) the term "pilot plant" means an experimental unit of small size, usually less than one hundred thousand gallons per day capacity, used for early evaluation and development of new or improved processes and to obtain technical and engineering data;

(f) the term "test bed" means an intermediate-sized, experimental desalting plant of up to two million gallons per day capacity used for further evaluation and refinement of processes in the field and designed to facilitate the incorporation of experimental features for performance testing and to permit process changes and improvements as required;

(g) the term "module" means a section or integral portion of a desalting plant which is used initially to study large-scale technology and critical design features in preparation for subsequent prototype construction;

(h) the term "prototype" means a full-size, first-of-a-kind production plant used for development, study, and demonstration of full-sized technology, plant operation, and process economics.

(Pub. L. 92–60, § 9, July 29, 1971, 85 Stat. 162.)

§ 1959h. Authorization of appropriations.

(a) Availability of moneys for various expenses; increases and decreases in expenditures and obligations.

There is authorized to be appropriated to carry out the provisons of this chapter during fiscal year 1972, the sum of $27,025,000, to remain available until expended, as follows:

(1) Research expense, not more than $5,475,000;

(2) Development expense, not more than $10,200,000;

(3) Design, construction, acquisition, modification, operation, and maintenance of saline water conversion test bers and test facilities, not more than $7,385,000;

(4) Design, construction, acquisition, modification, operation, and maintenance of saline water conversion modules, not more than $1,425,000; and

(5) Administration and coordination not more than $2,540,000.

Expenditures and obligations under paragraphs (1), (2), (3), and (4) of this subsection may be increased by not more than 10 per centum, and expenditures and obligations under paragraph (5) may be increased by not more than 2 per centum, if any such increase under any paragraph is accompanied by an equal decrease in expenditures and obligations under one or more of the other paragraphs.

(b) Annual appropriation authorization; availability of moneys for execution of provisions, for grants, contracts, cooperative agreements, and studies, and for correlation of results of studies and research.

There are authorized to be appropriated such sums, to remain available until expended, as may be specified in annual appropriation authorization Acts to carry out the provisions of this chapter during the fiscal years 1973 to 1977, inclusive, and to finance, for not more than three years beyond the end of said period, such grants, contracts, cooperative agreements, and studies as may theretofore have been undertaken pursuant to this chapter and such activities as are required to correlate, coordinate, and round out the results of studies and research undertaken pursuant to this chapter.

(c) Foreign research; availability of funds.

Not more than 2 per centum of the funds to be made available in any fiscal year for research under the authority of this chapter may be expended, subject to the approval of the Secretary of State to assure that such activities are consistent with the foreign policy objectives of the United States, in cooperation with public or private agencies in foreign countries for research useful to the program in the United States. (Pub. L. 92–60, § 10, July 29, 1971, 85 Stat. 162.)

29. Submerged Lands

43 U.S.C. 1301–1343

SUBCHAPTER I.—GENERAL PROVISIONS

SUBCHAPTER II.—LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

SUBCHAPTER III.—OUTER CONTINENTAL SHELF LANDS

SUBCHAPTER I.—GENERAL PROVISIONS

§ 1301. Definitions.

When used in this chapter—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section

1312 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however*, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation. (May 22, 1953, ch. 65, title I, § 2, 67 Stat. 29.)

§ 1302. Resources seaward of the Continental Shelf.

Nothing in this chapter shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 1301 of this title, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is confirmed. (May 22, 1953, ch. 65, title II, § 9, 67 Stat. 32.)

§ 1303. Sections not affected.

Nothing in this chapter shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto. (May 22, 1953, ch. 65, title II, § 7, 67 Stat. 32.)

SUBCHAPTER II.—LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

§ 1311. Rights of the States.

(a) Confirmation and establishment of title and ownership of lands and resources; management, administration, leasing, development, and use.

It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) Release and relinquishment of title and claims of United States; payment to States of moneys paid under leases.

(1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on May 22, 1953, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) Leases in effect on June 5, 1950.

The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations

thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however*, That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from May 22, 1953 equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however*, That within ninety days from May 22, 1953 (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and May 22, 1953, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Authority and rights of the United States respecting navigation, flood control and production of power.

Nothing in this chapter shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Ground and surface waters west of the 98th meridian.

Nothing in this chapter shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States. (May 22, 1953, ch. 65, title II, § 3, 67 Stat. 30.)

§ 1312. Seaward boundaries of States.

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. (May 22, 1953, ch. 65, title II, § 4, 67 Stat. 31.)

§ 1313. Exceptions from confirmation and establishment of States' title, power and rights.

There is excepted from the operation of section 1311 of this title—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude. (May 22, 1953, ch. 65, title II, § 5, 67 Stat. 32.)

§ 1314. Rights and powers retained by the United States; purchase of natural resources; condemnation of lands.

(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective

States and others by section 1311 of this title.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor. (May 22, 1953, ch. 65, title II, § 6, 67 Stat. 32.)

§ 1315. Rights acquired under laws of the United States unaffected.

Nothing contained in this chapter shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this chapter and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing contained in this chapter is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this chapter, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this chapter. (May 22, 1953, ch. 65, title II, § 8, 67 Stat. 32.)

SUBCHAPTER III.—OUTER CONTINENTAL SHELF LANDS

§ 1331. Definitions.

When used in this subchapter—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior;

(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation. (Aug. 7, 1953, ch. 345, § 2, 67 Stat. 462.)

§ 1332. Congressional declaration of policy; jurisdiction; construction.

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected. (Aug. 7, 1953, ch. 345, § 3, 67 Stat. 462.)

§ 1333. Laws and regulations governing lands.

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction.

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) Jurisdiction of United States district courts.

The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

(c) Applicability of Longshoremen's and Harbor Workers' Compensation Act; definitions.

With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b) of this section, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and

Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(d) Applicability of National Labor Relations Act.

For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island or fixed structure referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island or structure.

(e) Coast Guard regulations; marking of islands and structures; offenses and penalties.

(1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than $100 for each offense. Each day during which such violation shall continue shall be considered a new offense.

(f) Prevention of obstruction to navigation by Secretary of the Army.

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to artificial islands and fixed structures located on the outer Continental Shelf.

(g) Provisions as non-exclusive.

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands and fixed structures referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended. (Aug. 7, 1953, ch. 345, § 4, 67 Stat. 462.)

§ 1334. Administration of leasing.

(a) Rules and regulations; amendment; cooperation with State agencies; violations and penalties; compliance with regulations as condition of lease.

(1) The Secretary shall administer the provisions of this subchapter relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter. In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent States. Without limiting the generality of the foregoing provisions of this section, the rules and regulations prescribed by the Secretary thereunder may provide for the assignment or relinquishment of leases, for the sale of royalty oil and gas accruing or reserved to the United States at not less than market value, and, in the interest of conservation, for unitization, pooling, drilling agreements, suspension of operations or production, reduction of rentals or royalties, compensatory royalty agreements, subsurface storage of oil or gas in any of said submerged lands, and drilling or other easements necessary for operations or production.

(2) Any person who knowingly and willfully violates any rule or regulation prescribed by the Secretary for the prevention of waste, the conservation of the natural resources, or the protection of correlative rights shall be deemed guilty of a misdemeanor and punishable by a fine of not more than $2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, and each day of violation shall be deemed to be a separate offense. The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease under the provisions of this subchapter shall be conditioned upon compliance with the regulations issued under this subchapter and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 1337 of this title, or with the regulations issued under the provisions of section 1335 (b) (2) of this title if the lease is maintained under the provisions of section 1335 of this title.

(b) Cancellation of lease; judicial review.

(1) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 1337 of this title, or of the regulations issued under the provisions of section 1335 (b) (2) of this title, if the lease is maintained under the provisions of section

1335 of this title, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in section 1337 (j) of this title, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(2) Whenever the owner of any producing lease fails to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 1337 of this title, or of the regulations issued under the provisions of section 1335 (b) (2) of this title, hereof, if the lease is maintained under the provisions of section 1335 of this title, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 1333 (b) of this title.

(c) Pipeline rights-of-way; forfeiture of grant.

Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this subchapter, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other mineral under such regulations and upon such conditions as to the application therefor and the survey, location and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed thereunder shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of section 1333 (b) of this title. (Aug. 7, 1953, ch. 345, § 5, 67 Stat. 464.)

KEY LARGO CORAL REEF PRESERVE

Secretary of the Interior to prescribe rules and regulations governing the protection and conservation of the coral and other mineral resources in the area designated Key Largo Coral Reef Preserve, see Proc. No. 3339, Mar. 15, 1960, 25 F. R. 2352, set out as a note under section 461 of Title 16, Conservation.

§ 1335. Validation and maintenance of prior leases.

(a) Requirements for validation.

The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from the effective date of this subchapter, or within such further period or periods as provided in section 1336 of this title or as may be fixed from time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had the authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in paragraph (1) of this subsection, (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 1336 of this title hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and August 7, 1953, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after August 7, 1953, are paid to the Secretary, who shall deposit such payments in the Treasury in accordance with section 1338 of this title;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on August 7, 1953;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than 12½ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary, to the increase of the royalty to the minimum herein specified;

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and August 7, 1953 and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which

would have been payable on such production to the State issuing the lease under its laws as they existed on August 7, 1953;

(10) such lease will terminate within a period of not more than five years from August 7, 1953 in the absence of production or operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

(b) Conduct of operations under lease; sulphur rights.

Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provisions of paragraphs (8)—(10) of subsection (a) of this section, as to royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from August 7, 1953 equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 1334 of this title prescribe within ninety days after making his determination that such lease meets the requirements of subsection (a) of this section: *Provided, however,* That any rights to sulphur under any lease maintained under the provisions of this subsection shall not extend beyond the primary term of such lease or any extension thereof under the provisions of this subsection unless sulphur is being produced in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by such lease on the date of expiration of such primary term or extension: *Provided further,* That if sulphur is being produced in paying quantities on such date, then such rights shall continue to be maintained in accordance with such lease and the provisions of this subchapter: *Provided further,* That, if the primary term of a lease being maintained under this subsection has expired prior to August 7, 1953 and oil or gas is being produced in paying quantities on such date, then such rights to sulphur as the lessee may have under such lease shall continue for twenty-four months from August 7, 1953 and as long thereafter as sulphur is produced in paying quantities, or drilling, well working, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by the lease.

(c) Non-waiver of United States claims

The permission granted in subsection (b) of this section shall not be construed to be a waiver of such claims, if any, as the United States may have against the lessor or the lessee or any other person respecting sums payable or paid for or under the lease, or respecting activities conducted under the lease, prior to August 7, 1953.

(d) Judicial review of determination.

Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

(e) Lands beneath navigable waters.

In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in subchapters I and II of this chapter, as well as lands of the outer Continental Shelf, the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf. (Aug. 7, 1953, ch. 345, § 6, 67 Stat. 465.)

§ 1336. Controversies over jurisdiction; agreements; payments; final settlement or adjudication; approval of notice concerning oil and gas operations in Gulf of Mexico.

In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this subchapter, the Secretary is authorized, notwithstanding the provisions of section 1335 (a) and (b) of this title and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State, its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums payable thereunder, or with the State, its political subdivision or grantee, respecting the issuance or nonissuance of new mineral leases pending the settlement or adjudication of the controversy. The authorization contained in the preceding sentence of this section shall not be construed to be a limitation upon the authority conferred on the Secretary in other sections of this subchapter. Payments made pursuant to such agreement, or pursuant to any stipulation between the United States and a State, shall be considered as compliance with section 1335 (a) (4) of this title. Upon the termination of such agreement or stipulation by reason of the final settlement or adjudication of such controversy, if the lands subject to any mineral lease are determined to be in whole or in part lands subject to the provisions of this subchapter, the lessee, if he has not already done so, shall comply with the requirements of section 1335 (a) of this title, and thereupon

the provisions of section 1335 (b) of this title shall govern such lease. The notice concerning "Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico" issued by the Secretary on December 11, 1950 (15 F. R. 8835), as amended by the notice dated January 26, 1951 (16 F. R. 953), and as supplemented by the notices dated February 2, 1951 (16 F. R. 1203), March 5, 1951 (16 F. R. 2195), April 23, 1951 (16 F. R. 3623), June 25, 1951 (16 F. R. 6404), August 22, 1951 (16 F. R. 8720), October 24, 1951 (16 F. R. 10998), December 21, 1951 (17 F. R. 43), March 25, 1952 (17 F. R. 2821), June 26, 1952 (17 F. R. 5833), and December 24, 1952 (18 F. R. 48), respectively, is approved and confirmed. (Aug. 7, 1953, ch. 345, § 7, 67 Stat. 467.)

§ 1337. Grant of leases by Secretary.

(a) Oil and gas leases; award to highest bidder; method of bidding.

In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of section 1335 (a) of this title. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of a cash bonus with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned, with a cash bonus fixed by the Secretary.

(b) Terms and provisions of oil and gas leases.

An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, (3) require the payment of a royalty of not less than 12½ per centum, in the amount or value of the production saved, removed, or sold from the lease, and (4) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.

(c) Sulphur leases; award to highest bidder; method of bidding.

In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of section 1335 (a) of this title, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(d) Terms and provisions of sulphur leases.

A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(e) Other mineral leases; award to highest bidder; terms and conditions.

The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(f) Publication of notices of sale and terms of bidding.

Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(g) Disposition of revenues.

All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 1338 of this title.

(h) Issuance of lease as non-prejudicial to ultimate settlement or adjudication of controversies.

The issuance of any lease by the Secretary pursuant to this subchapter, or the making of any interim arrangements by the Secretary pursuant to section 1336 of this title shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(i) Cancellation of leases for fraud.

The Secretary may cancel any lease obtained by fraud or misrepresentation.

(j) Judicial review of cancellation of lease; petition within sixty days.

Any person complaining of a cancellation of a lease by the Secretary may have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review within sixty days after the Secretary takes such action. (Aug. 7, 1953, ch. 345, § 8, 67 Stat. 468.)

§ 1338. Disposition of revenues.

All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts. (Aug. 7, 1953, ch. 345, § 9, 67 Stat. 469.)

§ 1339. Refunds; filing time limitation; certification of repayment; necessity of report to Congress.

(a) Subject to the provisions of subsection (b) of this section, when it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this subchapter in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment, or within ninety days after August 7, 1953. The Secretary shall certify the amounts of all such repayments to the Secretary of the Treasury, who is authorized and directed to make such repayments out of any moneys in the special account established under section 1338 of this title and to issue his warrant in settlement thereof.

(b) No refund of or credit for such excess payment shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts upon which the determination of the Secretary was made is submitted to the President of the Senate and the Speaker of the House of Representatives for transmittal to the appropriate legislative committee of each body, respectively: *Provided*, That if the Congress shall not be in session on the date of such submission or shall adjourn prior to the expiration of thirty days from the date of such submission, then such payment or credit shall not be made until thirty days after the opening day of the next succeeding session of Congress. (Aug. 7, 1953, ch. 345, § 10, 67 Stat. 469.)

§ 1340. Geological and geophysical explorations.

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this subchapter, and which are not unduly harmful to aquatic life in such area. (Aug. 7, 1953, ch. 345, § 11, 67 Stat. 469.)

§ 1341. Reservation of lands and rights.

(a) Withdrawal of unleased lands by President.

The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.

(b) First refusal of mineral purchases.

In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf.

(c) National security clause.

All leases issued under this subchapter, and leases, the maintenance and operation of which are authorized under this subchapter, shall contain or be construed to contain a provision whereby authority is vested in the Secretary, upon a recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.

(d) National defense areas; suspension of operations; extension of leases.

The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense; and if operations or production under any lease theretofore issued on lands within any such restricted area shall be suspended, any payment of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

(e) Source materials essential to production of fissionable materials.

All uranium, thorium, and all other materials determined pursuant to paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the subsoil or seabed of the outer Continental Shelf are reserved for the use of the United States.

(f) Helium ownership; rules and regulations governing extraction.

The United States reserves and retains the ownership of and the right to extract all helium, under such rules and regulations as shall be prescribed by the Secretary, contained in gas produced from any portion of the outer Continental Shelf which may be subject to any lease maintained or granted pursuant to this subchapter, but the helium shall be extracted from such gas so as to cause no substantial delay in the delivery of gas produced to the purchaser of such gas. (Aug. 7, 1953, ch. 345, § 12, 67 Stat. 469.)

§ 1342. Prior claims as unaffected.

Nothing herein contained shall affect such rights, if any, as may have been acquired under any law

of the United States by any person in lands subject to this subchapter and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing herein contained is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact applies to the lands subject to this subchapter or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything herein contained. (Aug. 7, 1953, ch. 345, § 14, 67 Stat. 470.)

§ 1343. Annual report by Secretary to Congress.

As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this subchapter during the preceding fiscal year. (Aug. 7, 1953, ch. 345, § 15, 67 Stat. 470.)

30. Waste Materials Tonnage for Shipping

46 U.S.C. 77

(See Waste Materials Tonnage for Shipping under title XI *Water Pollution*)

31. Water Bank Act

16 U.S.C. 1301–1311

Sec.

§ 1301. Congressional declaration of policy; authority of Secretary.

The Congress finds that it is in the public interest to preserve, restore, and improve the wetlands of the Nation, and thereby to conserve surface waters, to preserve and improve habitat for migratory waterfowl and other wildlife resources, to reduce runoff, soil and wind erosion, and contribute to flood control, to contribute to improved water quality and reduce stream sedimentation, to contribute to improved subsurface moisture, to reduce acres of new land coming into production and to retire lands now in agricultural production, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. The Secretary of Agriculture (hereinafter in this chapter referred to as the "Secretary") is authorized and directed to formulate and carry out a continuous program to prevent the serious loss of wetlands, and to preserve, restore, and improve such lands, which program shall begin on July 1, 1971. (Pub. L. 91–559, § 2, Dec. 19, 1970, 84 Stat. 1468.)

§ 1302. Conservation agreements to effectuate water bank program; duration and renewal; adjustment of payment rate for renewal period; wetlands defined; duration of ownership or control of land as determining eligibility for agreements; protection of and compensation for tenants and sharecroppers; participation by owner or operator in other Federal or State programs.

In effectuating the water bank program authorized by this chapter, the Secretary shall have authority to enter into agreements with landowners and operators in important migratory waterfowl nesting and breeding areas for the conservation of water on specified farm, ranch, or other wetlands identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the lands are located, under such rules and regulations as the Secretary may prescribe. These agreements shall be entered into for a period of ten years, with provision for renewal for additional periods of ten years each. The Secretary shall reexamine the payment rates at the beginning of any such ten-year renewal period in the light of the then current land and crop values and make needed adjustments in rates for any such renewal period. As used in this chapter, the term "wetlands" means the inland fresh areas (types 1 through 5) described in Circular 39, Wetlands of the United States, published by the

United States Department of the Interior (including artificially developed inland fresh areas which meet the description of inland fresh areas, types 1 through 5, contained in such Circular 39). No agreement shall be entered into under this chapter concerning land with respect to which the ownership or control has changed in the two-year period preceding the first year of the agreement period unless the new ownership was acquired by will or succession as a result of the death of the previous owner, or unless the new ownership was acquired prior to July 1, 1971, under other circumstances which the Secretary determines, and specifies by regulation, will give adequate assurance that such land was not acquired for the purpose of placing it in the program, except that this sentence shall not be construed to prohibit the continuation of an agreement by a new owner or operator after an agreement has once been entered into under this chapter. A person who has operated the land to be covered by an agreement under this chapter for as long as two years preceding the date of the agreement and who controls the land for the agreement period shall not be required to own the land as a condition of eligibility for entering into the agreement. Nothing in this section shall prevent an owner or operator from placing land in the program if the land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain. The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments or compensation under this program. No provision of this chapter shall prevent an owner or operator who is participating in the program under this chapter from participating in other Federal or State programs designed to conserve or protect wetlands. (Pub. L. 91–559, § 3, Dec. 19, 1970, 84 Stat. 1469.)

§ 1303. Same; required provisions.

In the agreement between the Secretary and an owner or operator, the owner or operator shall agree—

(1) to place in the program for the period of the agreement eligible wetland areas he designates, which areas may include wetlands covered by a Federal or State government easement which permits agricultural use, together with such adjacent areas as determined desirable by the Secretary;

(2) not to drain, burn, fill, or otherwise destroy the wetland character of such areas, nor to use such areas for agricultural purposes, as determined by the Secretary;

(3) to effectuate the wetland conservation and development plan for his land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the Secretary pursuant to section 1306 of this title;

(4) to forfeit all rights to further payments or grants under the agreement and refund to the United States all payments or grants received thereunder upon his violation of the agreement at any stage during the time he has control of the land subject to the agreement if the Secretary determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the agreement;

(5) upon transfer of his right and interest in the lands subject to the agreement during the agreement period, to forfeit all rights to further payments or grants under the agreement and refund to the United States all payments or grants received thereunder during the year of the transfer unless the transferee of any such land agrees with the Secretary to assume all obligations of the agreement;

(6) not to adopt any practice specified by the Secretary in the agreement as a practice which would tend to defeat the purposes of the agreement; and

(7) to such additional provisions as the Secretary determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

(Pub. L. 91–559, § 4, Dec. 19, 1970, 84 Stat. 1470.)

§ 1304. Same; annual payments; adjustment.

In return for the agreement of the owner or operator, the Secretary shall (1) make an annual payment to the owner or operator for the period of the agreement at such rate or rates as the Secretary determines to be fair and reasonable in consideration of the obligations undertaken by the owner or operator; and (2) bear such part of the average cost of establishing and maintaining conservation and development practices on the wetlands and adjacent areas for the purposes of this chapter as the Secretary determines to be appropriate. In making his determination, the Secretary shall consider, among other things, the rate of compensation necessary to encourage owners or operators of wetlands to participate in the water bank program. The rate or rates of annual payments as determined hereunder shall be increased, by an amount determined by the Secretary to be appropriate, in relation to the benefit to the general public of the use of the wetland areas, together with designated adjacent areas, if the owner or operator agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations. (Pub. L. 91–559, § 5, Dec. 19, 1970, 84 Stat. 1470.)

§ 1305. Same; renewal or extension; participation of subsequent owner or operator in program.

Any agreement may be renewed or extended at the end of the agreement period for an additional period of ten years by mutual agreement of the Secretary and the owner or operator, subject to any rate redetermination by the Secretary. If during the agreement period the owner or operator sells or otherwise divests himself of the ownership or right of occupancy of such land, the new owner or operator may continue such agreement under the same terms or conditions, or enter into a new agreement in accord-

ance with the provisions of this chapter, including the provisions for renewal and adjustment of payment rates, or he may choose not to participate in such program. (Pub. L. 91–559, § 6, Dec. 19, 1970, 84 Stat. 1471.)

§ 1306. Same; termination; modification.

The Secretary may terminate any agreement by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of agreements as he may determine to be desirable to carry out the purposes of the program or facilitate its administration. (Pub. L. 91–559, § 7, Dec. 19, 1970, 84 Stat. 1471.)

§ 1307. Utilization of services and facilities.

In carrying out the program, the Secretary may utilize the services of local, county, and State committees established under section 590h of this title. The Secretary is authorized to utilize the facilities and services of the Commodity Credit Corporation in discharging his functions and responsibilities under this program. (Pub. L. 91–559, § 8, Dec. 19, 1970, 84 Stat. 1471.)

§ 1308. Advisory Board; appointment; functions; membership; reimbursement for expenses.

The Secretary may, without regard to the civil service laws, appoint an Advisory Board to advise and consult on matters relating to his functions under this chapter as he deems appropriate. The Board shall consist of persons chosen from members of organizations such as wildlife organizations, land-grant colleges, farm organizations, State game and fish departments, soil and water conservation district associations, water management organizations, and representatives of the general public. Members of such an Advisory Board who are not regular full-time employees of the United States shall be entitled to reimbursement on an actual expense basis for attendance at Advisory Board meetings. (Pub. L. 91–559, § 9, Dec. 19, 1970, 84 Stat. 1471.)

§ 1309. Consultation with Secretary of the Interior; conformity of program with wetlands programs administered by Secretary of the Interior; consultation with and utilization of technical services of appropriate local, State, Federal, and private conservation agencies; coordination of programs.

The Secretary shall consult with the Secretary of the Interior and take appropriate measures to insure that the program carried out pursuant to this chapter is in harmony with wetlands programs administered by the Secretary of the Interior. He shall also, insofar as practicable, consult with and utilize the technical and related services of appropriate local, State, Federal, and private conservation agencies to assure coordination of the program with programs of such agencies and a solid technical foundation for the program. (Pub. L. 91–559, § 10, Dec. 19, 1970, 84 Stat. 1471.)

§ 1310. Authorization of appropriations; maximum amount of payments pursuant to agreements.

There are hereby authorized to be appropriated without fiscal year limitation, such sums as may be necessary to carry out the program authorized by this chapter. In carrying out the program, the Secretary shall not enter into agreements with owners and operators which would require payments to owners or operators in any calendar year under such agreements in excess of $10,000,000. (Pub. L. 91–559, § 11, Dec. 19, 1970, 84 Stat. 1471.)

§ 1311. Rules and regulations.

The Secretary shall prescribe such regulations as he determines necessary and desirable to carry out the provisions of this chapter. (Pub. L. 91–559, § 12, Dec. 19, 1970, 84 Stat. 1471.)

32. Water Pollution Control in Appalachia

40 App. U.S.C. §§ 1–2, 203, 205–206, 212

(See Water Pollution Control in Appalachia under title IX *Pollution Control, Financing*)

33. Water Resources Planning Act

42 U.S.C. 1962–1962a–3

Sec.

§ 1962. Congressional statement of policy.

In order to meet the rapidly expanding demands for water throughout the Nation, it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and

others concerned. (Pub. L. 89–80, § 2, July 22, 1965, 79 Stat. 244.)

§ 1962–1. Effect on existing laws.

Nothing in this chapter shall be construed—

(a) to expand or diminish either Federal or State jurisdiction, responsibility, or rights in the field of water resources planning, development, or control; nor to displace, supersede, limit or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this chapter with respect to the preparation and review of comprehensive regional or river basin plans and the formulation and evaluation of Federal water and related land resources projects;

(c) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water and related land resources or to exercise licensing or regulatory functions in relation thereto, except as required to carry out the provisions of this chapter; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States Operating Entity or Entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

(d) as authorizing any entity established or acting under the provisions hereof to study, plan, or recommend the transfer of waters between areas under the jurisdiction of more than one river basin commission or entity performing the function of a river basin commission.

(Pub. L. 89–80, § 3, July 22, 1965, 79 Stat. 244.)

§ 1962–2. Congressional statement of objectives.

It is the intent of Congress that the objectives of enhancing regional economic development, the quality of the total environment, including its protection and improvement, the well-being of the people of the United States, and the national economic development are the objectives to be included in federally financed water resource projects, and in the evaluation of benefits and cost attributable thereto, giving due consideration to the most feasible alternative means of accomplishing these objectives. (Pub. L. 91–611, title II, § 209, Dec. 31, 1970, 84 Stat. 1829.)

SUBCHAPTER I.—WATER RESOURCES COUNCIL

§ 1962a. Establishment; composition; other Federal agency participation; designation of Chairman.

There is hereby established a Water Resources Council (hereinafter referred to as the "Council") which shall be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the Chairman of the Federal Power Commission. The Chairman of the Council shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council. The Chairman of the Council shall be designated by the President. (As amended Pub. L. 94–112, § 1(a), Oct. 16, 1975, 89 Stat. 575.)

AMENDMENTS

1975—Pub. L. 94–112 included in the membership of the Water Resources Council, the Secretaries of Commerce, Housing and Urban Development, and Transportation and the Administrator of the Environmental Protection Agency, and terminated the membership for the Secretary of Health, Education, and Welfare.

§ 1962a–1. Powers and duties.

The Council shall—

(a) maintain a continuing study and prepare an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and

(b) maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs.

(Pub. L. 89–80, title I, § 102, July 22, 1965, 79 Stat. 245.)

§ 1962a–2. Establishment of principles, standards, and procedures for preparation of regional or river basin plans and Federal projects; revision of river basin planning commission plans.

The Council shall establish, after such consultation with other interested entities, both Federal and non-Federal, as the Council may find appropriate, and with the approval of the President, principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects. Such procedures may include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission. (Pub. L. 89–80, title I, § 103, July 22, 1965, 79 Stat. 245.)

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Chairman of the Walter Resources Council, see section 2 of Ex. Ord. No. 11747, Nov. 7, 1973, 38 F.R. 30993, set out as a note under section 1962a–3 of this title.

§ 1962a–3. Review of river basin commission plans; report to President and Congress.

Upon receipt of a plan or revision thereof from

any river basin commission under the provisions of section 1962b—3(3) of this title, the Council shall review the plan or revision with special regard to—

(1) the efficacy of such plan or revision in achieving optimum use of the water and related land resources in the area involved;

(2) the effect of the plan on the achievement of other programs for the development of agricultural, urban, energy, industrial, recreational, fish and wildlife, and other resources of the entire Nation; and

(3) the contributions which such plan or revision will make in obtaining the Nation's economic and social goals.

Based on such review the Council shall—

(a) formulate such recommendations as it deems desirable in the national interest; and

(b) transmit its recommendations, together with the plan or revision of the river basin commission and the views, comments, and recommendations with respect to such plan or revision submitted by any Federal agency, Governor, interstate commission, or United States section of an international commission, to the President for his review and transmittal to the Congress with his recommendations in regard to authorization of Federal projects.

(Pub. L. 89–80, title I, § 104, July 22, 1965, 79 Stat. 245.)

EX. ORD. NO. 11747. DELEGATION OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11747, Nov. 7, 1973, 38 F.R. 30993, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Management and Budget is designated and empowered to exercise, without the approval, ratification, or other action of the President, the functions vested in the President by (1) sections 104(b) and 204(3) of the Water Resources Planning Act, as amended (42 U.S.C. 1962a–3(b) and 1962b–3(3), respectively), with respect to reviewing plans, or revisions thereof, of river basin commissions established pursuant to that act and transmitting those plans or revisions thereto to the Congress with appropriate recommendations; and (2) section 301(b) of the same act (42 U.S.C. 1962c(b)) with respect to approving rules, procedures, arrangements, and provisions relating to coordination of Federal planning assistance programs and utilization of Federal agencies administering related programs.

SEC. 2. The Chairman of the Water Resources Council is designated and empowered to exercise, without the approval, ratification, or other action of the President, the approval function for standards and procedures vested in the President by section 103 of the Water Resources Planning Act, as amended (42 U.S.C. 1962a–2).

RICHARD NIXON.

34. Water Resources Research Act of 1964

42 U.S.C. 1961–1961c–8

GENERAL PROVISIONS

GENERAL PROVISIONS

§ 1961. Declaration of purpose.

In order to assist in assuring the Nation at all times of a supply of water sufficient in quantity and quality to meet the requirements of its expanding population, it is the purpose of the Congress, by this chapter, to stimulate, sponsor, provide for, and supplement present programs for the conduct of research, investigations, experiments, and the training of scientists in the fields of water and of resources which affect water. (Pub. L. 88–379, § 1(b), July 17, 1964, 78 Stat. 329.)

SUBCHAPTER I.—STATE WATER RESOURCES RESEARCH INSTITUTES

§ 1961a. Water resources research institutes.

(a) Appropriations; establishment; number; designation of institution; interstate or regional institutes; participation of educational institutions in institute work.

There are authorized to be appropriated to the Secretary of the Interior for the fiscal year 1965 and each subsequent year thereafter sums adequate to provide $75,000 to each of the several States in the first year, $87,500 in each of the second and third years, and $250,000 each year thereafter to assist each participating State in establishing and carrying on the work of a competent and qualified water resources research institute, center, or equivalent agency (hereinafter referred to as "institute") at one college or university in that State, which college or university shall be a college or university established in accordance with sections 301 to 305, 307 and 308 of Title 7 or some other institution designated by Act of the legislature of the State concerned: *Provided*, That (1) if there is more than one such college or university in a State, established in accordance with sections 301 to 305, 307 and 308 of Title 7, funds under this chapter shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid to the one such college or university designated by the Governor of the State to receive the same subject to the Secretary's determination that such college or university has, or may reasonably be expected to have, the capability of doing effective work under this chapter; (2) two or more States may cooperate in the designation of a single interstate or regional institute, in which event the sums assignable to all of the cooperating States shall be paid to such institute; and (3) a designated college or university may, as authorized by appropriate State authority, arrange with other colleges and universities within the State to participate in the work of the institute: *Provided further*, That for fiscal year 1973 not more than $125,000 shall be appropriated for each of the District of Columbia, the Virgin Islands, and Guam, and for fiscal year 1974 not more than $200,000 shall be appropriated for each of such areas.

(b) Duties of institutes; scope of activities.

It shall be the duty of each such institute to plan and conduct and/or arrange for a component or components of the college or university with which it is affiliated to conduct competent research, investigations, and experiments of either a basic or practical nature, or both, in relation to water resources and to provide for the training of scientists through such research, investigations, and experiments. Such research, investigations, experiments, and training may include, without being limited to, aspects of the hydrologic cycle; supply and demand for water; conservation and best use of available supplies of water; methods of increasing such supplies; and economic, legal, social, engineering, recreational, biological, geographic, ecological and other aspects of water problems and scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research deemed potentially significant for solution of water resource problems, providing means for improved communication regarding such research results, including prototype operations, ascertaining the existing and potential effectiveness of such for aiding in the solution of practical problems, and for training qualified persons in the performance of such scientific information dissemination; having due regard to the varying conditions and needs of the respective State, to water research projects being conducted by agencies of the Federal and State Governments, the agricultural experiment stations, and others, and to avoidance of any undue displacement of scientists and engineers elsewhere engaged in water resources research. The annual programs submitted by the State institutes to the Secretary for approval shall include assurance satisfactory to the Secretary that such programs were developed in close consultation and collaboration with leading water resources officials within the State to promote research, training, and other work meeting the needs of the State. (As amended Pub. L. 92–175, §§ 1–3, Dec. 2, 1971, 85 Stat. 493.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 92–175, § 1, substituted "$250,000" for "$100,000" and added the further proviso limiting the 1973 fiscal year appropriations for the District of Columbia, the Virgin Islands, and Guam to $125,000 each and the 1974 fiscal year appropriations to $200,000 each.

Subsec. (b). Pub. L. 92–175, §§ 2, 3, added the dissemination of scientific information to the enumeration of duties for the institutes and added requirement that the annual programs submitted by the State institutes to the Secretary for approval include assurance satisfactory to the Secretary that such programs were developed in close consultation and collaboration with leading water resources officials within the State to promote research, training, and other work meeting the needs of the State.

§ 1961a–1. Specific water resources research projects, including regional projects.

(a) Appropriations; matching funds.

There is further authorized to be appropriated to the Secretary of the Interior for the fiscal year 1965 and each subsequent year thereafter sums not in excess of the following: 1965, $1,000,000; 1966, and each subsequent year thereafter sums not in excess of the following: 1965, $1,000,000; 1966, $2,000,000; 1967, $3,000,000; 1968, $4,000,000; and 1969 and each of the succeeding years, $5,000,000. Such moneys when appropriated, shall be available to match, on a dollar-for-dollar basis, funds made available to institutes by States or other non-Federal sources to meet the necessary expenses of specific water resources research projects which could not otherwise be undertaken, including the expenses of planning and coordinating regional water resources research projects by two or more institutes.

(b) Application for grants; contents; approval of projects; basis of grants.

Each application for a grant pursuant to subsection (a) of this section shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifica-

tions of the personnel who will direct and conduct it, the importance of the project to the water economy of the Nation, the region, and the State concerned, its relation to other known research projects theretofore pursued or currently being pursued, and the extent to which it will provide opportunity for the training of water resources scientists. No grant shall be made under said subsection (a) except for a project approved by the Secretary, and all grants shall be made upon the basis of the merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of water resources scientists. (Pub. L. 88–379, title I, § 101, July 17, 1964, 78 Stat. 330.)

§ 1961a–2. Payments to institutes; time; amount; vouchers; accounting officers; reports to Secretary of Interior; State replacement of diminished, lost, or misapplied funds.

Sums available to the States under the terms of sections 1961a and 1961a–1 of this title shall be paid to their designated institutes at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Funds received by an institute pursuant to such payment may be used for any allowable costs within the meaning of the Federal procurement regulations that establish principles for determining costs applicable to research and development under grants and contracts with educational institutions (41 CFR 1–15.3), including future amendments thereto: *Provided*, That the direct costs of the programs of each State institute, as distinguished from indirect costs, are not less than the amount of the Federal funds made available to such State institute pursuant to section 1961a of this title. Each institute shall have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this chapter and shall make an annual report to the Secretary on or before the 1st day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any of the provisions of this chapter during the preceding fiscal year, and of its disbursement, on schedules prescribed by the Secretary. If any of the moneys received by the authorized receiving officer of any institute under the provisions of this chapter shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, it shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State. (As amended Pub. L. 92–175, § 4, Dec. 2, 1971, 85 Stat. 493.)

AMENDMENTS

1971—Pub. L. 92–175 authorized the use of funds for any allowable costs within the meaning of the Federal procurement regulations that establish principles for determining costs applicable to research and development under grants and contracts with educational institutions, with the proviso that direct costs be not less than the amount of Federal funds made available to the State institute pursuant to section 1961a of this title.

§ 1961a–3. Funds for printing and publishing results of research, etc., administrative planning and direction, and planning, coordinating, and conducting cooperative research.

Moneys appropriated pursuant to this chapter, in addition to being available for expenses for research, investigations, experiments, and training conducted under authority of this chapter, shall also be available for printing and publishing the results thereof and for administrative planning and direction. The institutes are hereby authorized and encouraged to plan and conduct programs financed under this chapter in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the water problems involved, and moneys appropriated pursuant to this chapter shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research. (Pub. L. 88–379, title I, § 103, July 17, 1964, 78 Stat. 330.)

§ 1961a–4. Powers and duties of Secretary of Interior; administration; rules and regulations; other responsibilities.

The Secretary of the Interior is hereby charged with the responsibility for the proper administration of this chapter and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. He shall require a showing that institutes designated to receive funds have, or may reasonably be expected to have, the capability of doing effective work. He shall furnish such advice and assistance as will best promote the purposes of this chapter, participate in coordinating research initiated under this chapter by the institutes, indicate to them such lines of inquiry as to him seem most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

On or before the 1st day of July in each year after July 17, 1964, the Secretary shall ascertain whether the requirements of section 1961a–2 of this title have been met as to each State, whether it is entitled to receive its share of the annual appropriations for water resources research under section 1961a of this title, and the amount which it is entitled to receive. (Pub. L. 88–379, title I, § 104, July 17, 1964, 78 Stat. 331; Pub. L. 89–404, § 2, Apr. 19, 1966, 80 Stat. 130.)

AMENDMENTS

1966—Pub. L. 89–404 struck out provisions requiring the Secretary to make an annual report to Congress concerning the work of the institutes in all states, including receipts, expenditures, and any withholding of available appropriations. See section 1961c–7 of this title.

§ 1961a–5. Legal relationship of educational institution and State government; Federal control or direction of education.

Nothing in this chapter shall be construed to impair or modify the legal relation existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this chapter shall in any way be construed to

authorize Federal control or direction of education at any college or university. (Pub. L. 88–379, title I, § 105, July 17, 1964, 78 Stat. 331.)

SUBCHAPTER II.—ADDITIONAL WATER RESOURCES RESEARCH PROGRAMS

§ 1961b. Research into water problems related to the mission of the Department of the Interior.

(a) Authorization of appropriations.

There are authorized to be appropriated to the Secretary of the Interior $5,000,000 for the fiscal year 1967, $6,000,000 for the fiscal year 1968, $7,000,000 for the fiscal year 1969, $8,000,000 for the fiscal year 1970, $9,000,000 for the fiscal year 1971, and $10,000,000 for each of the fiscal years 1972–1976, inclusive, from which appropriations the Secretary may make grants to and finance contracts and matching or other arrangements with educational institutions, private foundations or other institutions, with private firms and individuals whose training, experience, and qualifications are, in his judgment, adequate for the conduct of water research projects, and with local, State, and Federal Government agencies, to undertake research into any aspects of water problems related to the mission of the Department of the Interior which he may deem desirable and which are not otherwise being studied.

(b) Submission to Congress of grant, contract, or arrangement.

No grant shall be made, no contract shall be executed, and no matching or other arrangement shall be entered into under subsection (a) of this section prior to sixty calendar days from the date the same is submitted to the President of the Senate and the Speaker of the House of Representatives and said sixty calendar days shall not include days on which either the Senate or the House of Representatives is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die.

(c) Annual report to the President and Congress.

In addition to other requirements of this chapter, the Secretary's annual report to the President and Congress as required by section 1961c–7 of this title shall specifically identify each contract and grant award approved under subsection (a) of this section in the preceding fiscal year, including the title of each research project, name of performing organization, and the amount of each grant or contract. (As amended Pub. L. 92–175, § 5, Dec. 2, 1971, 85 Stat. 493; Pub. L. 93–608, § 1(17), Jan. 2, 1974, 88 Stat. 1970.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 93–608 repealed subsec. (b) which required the submission to the President of the Senate and Speaker of the House of Representatives of a copy of each grant, etc., sixty days prior to the award of any such grant, etc., under provisions of section.

1971—Subsec. (c). Pub. L. 92–175 added subsec. (c).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 1961c. Cooperation of Federal, State, and private agencies; availability of information.

The Secretary of the Interior shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with water problems, of State and local governments, and of private institutions and individuals, to assure that the programs authorized in this chapter will supplement and not duplicate established water research programs, to stimulate research in otherwise neglected areas, and to contribute to a comprehensive, nationwide program of water and related resources research. He shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this chapter, in addition to any direct publication of information by the institutes themselves. (Pub. L. 88–379, title III, § 300, July 17, 1964, 78 Stat. 332.)

§ 1961c–1. Authority of Secretary of Interior over water resources research of other Federal agencies; existing authorities and responsibilities of Federal agencies unaffected.

Nothing in this chapter is intended to give or shall be construed as giving the Secretary of the Interior any authority or surveillance over water resources research conducted by any other agency of the Federal Government, or as repealing, superseding, or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its areas of responsibility and concern with water resources. (Pub. L. 88–379, title III, § 301, July 17, 1964, 78 Stat. 332.)

§ 1961c–2. Advance payments of initial expenses.

Contracts or other arrangements for water resources work authorized under this chapter with an institute, educational institution, or non-profit organization may be undertaken without regard to the provisions of section 529 of Title 31 when, in the judgment of the Secretary of the Interior, advance payments of initial expense are necessary to facilitate such work. (Pub. L. 88–379, title III, § 302, July 17, 1964, 78 Stat. 332.)

§ 1961c–3. Availability to public of resulting information and developments a condition for expenditure of funds for scientific or technological research or development activity; background patent owners' rights.

No part of any appropriated funds may be expended pursuant to authorization given by this chapter for any scientific or technological research or development activity unless such expenditure is conditioned upon provisions determined by the Secretary of the Interior, with the approval of the Attorney General, to be effective to insure that all information, uses, products, processes, patents, and other developments resulting from that activity will (with such exceptions and limitations as the Secretary may determine, after consultation with the Secretary of Defense, to be necessary in the interest of the national defense) be made freely and fully available to the general public. Nothing contained in this section shall deprive the owner of any background patent relating to any such activity of any rights which that owner may have under that patent. (Pub. L. 88–379, title III, § 303, July 17, 1964, 78 Stat. 332.)

§ 1961c–4. Cataloging center.

There shall be established, in such agency and location as the President determines to be desirable, a center for cataloging current and projected scientific research in all fields of water resources. Each Federal agency doing water resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for general use a catalog of water resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities, private institutions, firms, and individuals as voluntarily may make such information available. (Pub. L. 88–379, title III, § 304, July 17, 1964, 78 Stat. 332.)

§ 1961c–5. Interagency coordination of water resources research.

The President shall, by such means as he deems appropriate, clarify agency responsibilities for Federal water resources research and provide for interagency coordination of such research, including the research authorized by this chapter. Such coordination shall include (a) continuing review of the adequacy of the Government-wide program in water resources research, (b) identification and elimination of duplication and overlaps between two or more agency programs, (c) identification of technical needs in various water resources research categories, (d) recommendations with respect to allocation of technical effort among the Federal agencies, (e) review of technical manpower needs and findings concerning the technical manpower base of the program, (f) recommendations concerning management policies to improve the quality of the Government-wide research effort, and (g) actions to facilitate interagency communication at management levels. (Pub. L. 88–379, title III, § 305, July 17, 1964, 78 Stat. 332.)

§ 1961c–6. "State" defined.

As used in this chapter, the term "State" includes the Commonwealth of Puerto Rico, the District of Columbia, and the territories of the Virgin Islands and Guam. (As amended Pub. L. 92–175, § 6, Dec. 2, 1971, 85 Stat. 494.)

AMENDMENTS

1971—Pub. L. 92–175 added "the District of Columbia, and the territories of the Virgin Islands and Guam".

§ 1961c–7. Annual report by the Secretary of Interior to the President and Congress.

The Secretary shall make a report to the President and Congress on or before October 1 of each year showing the disposition during the preceding fiscal year of moneys appropriated to carry out this chapter, the results expected to be accomplished through projects financed during that year under sections 1961a–1 and 1961b of this title, and the conclusions reached in or other results achieved by those projects which were completed during that year. The report shall also include an account of the work of all institutes financed under section 1961a of this title and indicate whether any portion of an allotment to any State was withheld and, if so, the reasons therefor. (As amended Pub. L. 92–175, § 7, Dec. 2, 1971, 85 Stat. 494.)

AMENDMENTS

1971—Pub. L. 92–175 substituted "October 1" for "March 1" and "fiscal year" for "calendar year".

§ 1961c–8. Excess personal property; conveyance to cooperating institutes, educational institutions, and nonprofit organizations.

Excess personal property acquired by the Secretary under the Federal Property and Administrative Services Act of 1949, as amended, for use in furtherance of the purposes of this chapter may be conveyed by the Secretary to a cooperating institute, educational institution, or nonprofit organization, with or without consideration, under such terms and conditions as the Secretary may prescribe. (Pub. L. 88–379, title III, § 308, as added Pub. L. 92–175, § 8, Dec. 2, 1971, 85 Stat. 494.)

35. Wild and Scenic Rivers Act

16 U.S.C. 1271–1287

(See Wild and Scenic Rivers Act under title II *Environment, Generally*)

36. Wildlife Conservation at Water Resource Projects of the Secretary of the Army

33 U.S.C. 540

(See Wildlife Conservation at Water Resource Projects of the Secretary of the Army under title XIII *Wildlife Preservation*)

TITLE XIII—WILDLIFE PRESERVATION

1. Administration of National Wildlife Refuge System

16 U.S.C. 668dd–668jj

§ 668dd. National Wildlife Refuge System.

(a) Designation; public land withdrawals; disposal of acquired lands; proceeds.

(1) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the **"National Wildlife Refuge System" (referred to herein as the "System"), which shall be subject to** the provisions of this section, and shall be administered by the Secretary through the United States Fish and Wildlife Service. With respect to refuge lands in the State of Alaska, those programs relating to the management of resources for which any other agency of the Federal Government exercises administrative responsibility through cooperative agreement shall remain in effect, subject to the direct supervision of the United States Fish and Wildlife Service, as long as such agency agrees to exercise such responsibility.

(2) No acquired lands which are or become a part of the System may be transferred or otherwise disposed of under any provision of law (except by exchange pursuant to subsection (b)(3) of this section) unless—

(A) the Secretary of the Interior determines with the approval of the Migratory Bird Conservation Commission that such lands are no longer needed for the purposes for which the System was established; and

(B) such lands are transferred or otherwise disposed of for an amount not less than—

(i) the acquisition costs of such lands, in the case of lands of the System which were purchased by the United States with funds from the migratory bird conservation fund, or fair market value, whichever is greater; or

(ii) the fair market value of such lands (as determined by the Secretary as of the date of the transfer or disposal), in the case of lands of the System which were donated to the System.

The Secretary shall pay into the migratory bird conservation fund the aggregate amount of the proceeds of any transfer or disposal referred to in the preceding sentence.

(3) Each area which is included within the System on January 1, 1975, or thereafter, and which was or is—

(A) designated as an area within such System by law, Executive order, or secretarial order; or

(B) so included by public land withdrawal, donation, purchase, exchange, or pursuant to a cooperative agreement with any State or local government, any Federal department or agency, or any other governmental entity,

shall continue to be a part of the System until otherwise specified by Act of Congress, except that nothing in this paragraph shall be construed as precluding—

(i) the transfer or disposal of acquired lands within any such area pursuant to paragraph (2) of this subsection;

(ii) the exchange of lands within any such area pursuant to subsection (b)(3) of this section; or

(iii) the disposal of any lands within any such area pursuant to the terms of any cooperative agreement referred to in subparagraph (B) of this paragraph.

(b) Administration; public accommodations contracts; acceptance and use of funds; exchange of properties; cash equalization payments.

In administering the System, the Secretary is authorized—

(1) to enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations when, and in such locations, and to the extent that the Secretary determines will not be inconsistent with the primary purpose for which the affected area was established.

(2) to accept donations of funds and to use such funds to acquire or manage lands or interests therein, and

(3) to acquire lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition, or (B) for the right to remove, in accordance with such terms and conditions as he may prescribe, products from the acquired or public lands within the System. The values of the properties so exchanged either shall be approximately equal, or if they are not approxi-

mately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(c) Prohibited and permitted activities; application of mining and mineral leasing laws, hunting or fishing regulations, and State laws or regulations.

No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to October 15, 1966, unless subsequently withdrawn under other authority of law. With the exception of endangered species and threatened species listed by the Secretary pursuant to section 1533 of this title in States wherein a cooperative agreement does not exist pursuant to section 1535(c) of this title, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System.

(d) Use of areas; administration of migratory bird sanctuaries as game taking areas; rights of way, easements, and reservations; payment of fair market value.

(1) The Secretary is authorized, under such regulations as he may prescribe, to—

(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe; and

(B) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatibale with the purposes for which these areas are established.

(2) Notwithstanding any other provision of law, the Secretary of the Interior may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary, at the option of the Secretary, either (A) in lump sum the fair market value (determined by the Secretary as of the date of conveyance to the grantee) of the right-of-way, easement, or reservation; or (B) annually in advance the fair market rental value (determined by the Secretary) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel; except that (A) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (B) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary of the Interior pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).

(e) Penalties.

Any person who violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder shall be fined not more than $500 or be imprisoned not more than six months, or both.

(f) Enforcement provision; arrests, searches, and seizures; custody of property; forfeitures; disposition.

Any person authorized by the Secretary of the Interior to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competence jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate

animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the court.

(g) Regulations; continuation, modification, or rescission.

Regulations applicable to areas of the System that are in effect on October 15, 1966, shall continue in effect until modified or rescinded.

(h) National conservation recreational area provisions; amendment, repeal, or modification.

Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of sections 460k to 460k–4 of this title which authorizes the Secretary of the Interior to administer the areas within the System for public recreation. The provisions of this section relating to recreation shall be administered in accordance with the provisions of said sections.

(i) Exemption from State water laws.

Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws (As amended Pub. L. 93–205, § 13(a), Dec. 28, 1973, 1603; Pub. L. 94–215, § 5, Feb. 17, 1976, 90 Stat. 189; Pub. L. 94–223, Feb. 27, 1976, 90 Stat. 199.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–223 amended subsec. (a) generally.

Subsec. (b)(3). Pub. L. 94–215 amended paragraph (3) generally.

1974—Subsec. (d). Pub. L. 93–509 designated existing provisions as par. (1)(A) and (B), and added par. (2).

1973—Subsec. (c). Pub. L. 93–205 inserted "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 1533 of this title in States wherein a cooperative agreement does not exist pursuant to section 1535(c) of this title" preceding "nothing in this Act shall be construed" and struck out ", including endangered species thereof," preceding "on lands not within the System" in the second sentence.

NATIONAL WILDLIFE REFUGES

Site of Refuge	*Date of Designation*
Egmont Key National Wildlife Refuge, Fla	July 10, 1974
Great Dismal Swamp National Wildlife Refuge, Virginia and North Carolina	Aug. 30, 1974
San Francisco Bay National Wildlife Refuge, Calif.	June 30, 1972
Seal Beach National Wildlife Refuge, Calif.	Aug. 29, 1972
Wyandotte National Wildlife Refuge, Mich.	Aug. 3, 1961

NATIONAL ENVIRONMENTAL CENTERS

Environmental Centers	*Date Designated*
Tinicum National Environmental Center, Pennsylvania	June 30, 1972

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Pub. L. 93–509 provided that: "Section 4(d)(2) of the Act of October 15, 1966 (as added by this Act) [subsec. (d)(2) of this section], shall apply with respect to any right-of-way, easement, or reservation granted by the Secretary of the Interior on or after the date of the enactment of this Act [Dec. 3, 1974], including any right-of-way, easement, or reservation granted on or after such date in connection with any use permitted by him pursuant to section 4(d)(2) of the Act of October 15, 1966 [now subsec. (d)(1)(B) of this section] (as in effect before the date of the enactment of this Act)."

§ 668ee. Definitions.

(a) The term "person" as used in this Act means any individual, partnership, corporation, or association.

(b) The terms "take" or "taking" or "taken" as used in this Act mean to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

(c) The terms "State" and the "United States" as used in this Act mean the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam. (Pub. L. 89–669, § 5, Oct. 15, 1966, 80 Stat. 929.)

§ 668ff. San Francisco Bay National Wildlife Refuge; establishment and designation.

For the preservation and enhancement of highly significant wildlife habitat in the area known as south San Francisco Bay in the State of California, for the protection of migatory waterfowl and other wildlife, including species known to be threatened with extinction, and to provide an opportunity for wildlife-oriented recreation and nature study within the open space so preserved, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized and directed to establish, as herein provided, a national wildlife refuge to be known as the San Francisco Bay National Wildlife Refuge (hereinafter referred to as the "refuge"). (Pub. L. 92–330, §1, June 30, 1972, 86 Stat. 399.)

§ 668gg. Same; description.

There shall be included within the boundaries of the refuge those lands, marshes, tidal flats, salt ponds, submerged lands, and open waters in the south San Francisco Bay area generally depicted on the map entitled "Boundary Map, Proposed San Francisco Bay National Wildlife Refuge", dated July 1971, and which comprise approximately twenty-one thousand six hundred and sixty-two acres within four distinct units to be known as Fremont (five thousand five hundred and twenty acres), Mowry Slough (seven thousand one hundred and seventy-five acres), Alviso (three thousand and eighty acres), and Greco Island (five thousand eight hundred and eighty-seven acres). Said boundary map shall be on file and available for public inspection in the offices of the Bureau of Sport Fisheries and Wildlife, Department of the Interior. (Pub. L. 92–330, § 2, June 30, 1972, 86 Stat. 399.)

§ 668hh. Same; establishment of area; publication in Federal Register; corrections in boundaries; maximum area; administration by Secretary.

(a) The Secretary shall establish the refuge by publication of a notice to that effect in the Federal Register at such time as he determines that lands, waters, and interests therein sufficient to constitute an efficiently administrable refuge have been acquired for administration in accordance with the purposes of sections 668ff to 668jj of this title. The Secretary may from time to time make corrections

in the boundaries of the refuge, but the total area within the boundaries shall not exceed twenty-three thousand acres of land, marshes, tidal flats, salt ponds, submerged lands, and open waters.

(b) Prior to the establishment of the refuge and thereafter, the Secretary shall administer the lands, waters, and interests therein acquired for the refuge in accordance with the provisions of sections 668dd and 668ee of this title; except that the Secretary may utilize such additional statutory authority as may be available to him for the conservation and management of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive education as he deems appropriate to carry out the purposes of sections 668ff to 668jj of this title. (Pub. L. 92–330, § 3, June 30, 1972, 86 Stat. 399.)

§ 668ii. Same acquisition by Secretary of lands and waters or interests therein.

The Secretary may acquire lands and waters or interests therein within the boundaries of the refuge by donation, purchase with donated or appropriated funds, or exchange: *Provided, however,* That lands, waters, and interests therein owned by the State of California or any political subdivision thereof may be acquired only by donation. (Pub. L. 92–330, § 4, June 30, 1972, 86 Stat. 399.)

§ 668jj. Same; authorization of appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 668ff to 668jj of this title for the period beginning July 1, 1972, and ending June 30, 1977, not to exceed, however, $9,000,000 for the acquisition of lands and interests therein as authorized by section 668ii of this title, and not to exceed $11,300,000 for the carrying out of the other provisions of sections 668ff to 668jj of this title. (Pub. L. 92–330, §5, June 30, 1972, 86 Stat. 400.)

2. Back Bay National Wildlife Refuge

Pub. L. 81–718 (64 Stat. 465)

AN ACT

To provide for the granting of an easement for a public road or public toll road through the wildlife refuge located in Princess Anne County, Virginia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to convey to the Commonwealth of Virginia or to a public toll road authority which may now or hereafter be created by the Commonwealth of Virginia a permanent easement for the construction of a public road or public toll road (together with rights for such other uses as may be customary or necessary in connection with the construction or operation of such a road) through the wildlife refuge located in Princess Anne County, Virginia, upon such terms and conditions as he may prescribe: *Provided, however,* That the conveyance authorized by this Act shall be made only upon payment to the United States of a sum equal to the value, as determined by the Secretary of the Interior, of the lands included therein and any such sums shall be credited to the migratory bird conservation fund and shall be available for expenditure in accordance with authorizations relating thereto.

Approved August 19, 1950.

3. Bear River Migratory Bird Refuge

Pub. L. 89–441 (80 Stat. 192)

AN ACT

To authorize conveyance of certain lands to the State of Utah based upon fair market value.

* * * * *

SEC. 2. Subject to the other provisions of this Act, the Secretary of the Interior shall by quitclaim deed convey to the State of Utah all right, title, and interest of the United States in lands including brines and minerals in solution in the brines or precipitated or extracted therefrom, lying below the meander line of the Great Salt Lake in such State, as duly surveyed heretofore or in accordance with section 1 of this Act, whether such lands now are or in the future may become uncovered by the recession of the waters of said lake: *Provided, however,* That the provisions of this Act shall not affect (1) any valid existing rights or interests, if any, of any person, partnership, association, corporation, or other nongovernmental entity, in or to any of the lands within and below said meander line, or (2) any lands within the Bear River Migratory Bird Refuge and the Weber Basin Federal reclamation project. Such conveyance shall be made when the survey required by section 1 has been completed and the agreement required by section 6 has been made. * * *

4. Chincoteague National Wildlife Refuge

16 U.S.C. 459f–5(a), (b)

§ 459f–5. Same; administration.

(a) Public outdoor recreation and enjoyment; utilization of other authorities.

Except as provided in subsection (b) of this section, the Secretary shall administer the Assateague Island National Seashore for general purposes of public outdoor recreation, including conservation of natural features contributing to public enjoyment.

In the administration of the seashore and the administrative site the Secretary may utilize such statutory authorities relating to areas administered and supervised by the Secretary through the National Park Service and such statutory authority otherwise available to him for the conservation and management of natural resources as he deems appropriate to carry out the purposes of sections 459f to 459f–10 of this title.

(b) Refuge land and waters; application of national wildlife refuge provisions; public recreation uses in accordance with provisions for national conservation recreational areas.

Notwithstanding any other provision of sections 459f to 459f–10 of this title, land and waters in the Chincoteague National Wildlife Refuge, which are a part of the seashore, shall be administered for refuge purposes under laws and regulations applicable to national wildlife refuges, including administration for public recreation uses in accordance with the provisions of sections 460k to 460k–4 of this title. (Pub. L. 89–195, § 6, Sept. 21, 1965, 79 Stat. 826.)

* * * * *

5. Crab Orchard National Wildlife Refuge

Pub. L. 90–339 (82 Stat. 177)

AN ACT

To provide for the adjustment of the legislative jurisdiction exercised by the United States over lands within the Crab Orchard National Wildlife Refuge in Illinois

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, the obtaining or retaining of exclusive jurisdiction or any other measure of legislative jurisdiction by the United States over lands or interests therein which have been or shall hereafter be acquired as part of the Crab Orchard National Wildlife Refuge in Illinois shall not be required. The Secretary of the Interior may relinquish to the State of Illinois such measure of legislative jurisdiction as he may deem desirable over any lands or interests in the said refuge that are under his immediate jurisdiction, custody, or control. Such relinquishment of jurisdiction on the part of the United States shall be indicated by filing a notice thereof in such manner as may be prescribed for this purpose by the laws of the State of Illinois, and unless and until a notice is filed in accordance with such State laws, or with the Governor if the laws of such State do not prescribe another manner, it shall be conclusively presumed that no transfer of jurisdiction pursuant to this Act has taken place, nor shall any transfer of legislative jurisdiction pursuant to this Act take place unless and until the State of Illinois has accepted jurisdiction in such manner as its laws may provide. Upon a relinquishment by the United States of all of its legislative jurisdiction over said refuge to the State of Illinois, the State thereafter shall, with respect to such area, exercise the same jurisdiction which it would have had if legislative jurisdiction over such area had never been in the United States.

SEC. 2. Any civil or criminal process, lawfully issued by competent authority of the State of Illinois or political subdivision thereof may be served and executed within any area of the Crab Orchard National Wildlife Refuge under the exclusive, partial, or concurrent jurisdiction of the United States to the same extent and with the same effect as though such area were not subject to the legislative jurisdiction of the United States: *Provided,* That this section shall not be construed to affect the rights of authorized officers of the Federal Government or of any department or agency thereof to issue rules and regulations at any time for the purpose of preventing interference with the carrying out of Federal functions.

Approved June 15, 1968.

6. Egmont Key National Wildlife Refuge

Pub. L. 93–341 (88 Stat. 295)

AN ACT

To establish in the State of Florida the Egmont Key National Wildlife Refuge.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall establish the Egmont Key National Wildlife Refuge (hereafter referred to in this Act as the "refuge") as part of the national wildlife refuge system, which shall consist of that area of land and water described in section 2 of this Act.

SEC. 2. The Secretary of the Interior shall designate as the refuge, subject to existing valid rights, the land and water, being approximately two hundred and fifty acres, which are—

(1) generally depicted on the map entitled "Egmont Key National Wildlife Refuge", dated October 1973, and

(2) located within sections 23, 24, 25, and 26 of township 33 south, range 15 east, Tallahassee meridian, but excluding (A) the land therein under the jurisdiction of the United States Coast Guard which lies at the north end of the island north of a line drawn east to west six hundred feet south of the geometric center of the light tower, and (B) the land therein conveyed by the United States to the county of Hillsborough, Florida, by deed dated March 8, 1928,

by publication of a precise description of such land and water in the Federal Register. The map referred to in the preceding sentence shall be on file and available for public inspection in the office of the Bureau of Sport Fisheries and Wildlife, Department of the Interior.

SEC. 3. The Secretary of the Interior shall administer the refuge in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended (80 Stat. 927; 16 U.S.C. 668dd–ee).

Approved July 10, 1974.

7. Federal Assistance, Resource Conservation and Development Projects

7 U.S.C. 1010–1013

(See Federal Assistance, Resource Conservation and Development Projects under title V *Fish and Wildlife Conservation*)

8. Great Dismal Swamp National Wildlife Refuge

Pub. L. 93–492 (88 Stat. 801)

AN ACT

To establish the Great Dismal Swamp National Wildlife Refuge.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there is established a national wildlife refuge to be known as the "Great Dismal Swamp National Wildlife Refuge" (hereinafter referred to in this Act as the "Refuge"). The Refuge shall consist of—

(1) those lands and waters, comprising forty-nine thousand ninety-seven and eleven one-thousandths acres, of which a 40 per centum undivided interest therein was granted to the United States of America by The Nature Conservancy by deed dated February 22, 1973, and which are more particularly described in exhibit A of the deed, dated February 21, 1973, by which such interest in such lands and waters was granted to The Nature Conservancy by the Union Camp Corporation (and such deeds shall be on file and available for public inspection in the office of the Bureau of Sport Fisheries and Wildlife, Department of the Interior); and

(2) such additional lands and waters and interests therein as the Secretary of the Interior (hereinafter referred to in this Act as the "Secretary") may acquire after the date of the enactment of this Act pursuant to section 3 of this Act.

(b) Until such time as the remaining undivided interest in the lands and waters described in subsection (a)(1) of this section is granted to the Secretary, he shall lease such remaining interest on such terms and conditions as he deems appropriate.

SEC. 2. Subject to such restrictions, conditions, and reservations as are specified in the deeds referred to in the first section of this Act, the Secretary shall administer the lands and waters and interests therein within the Refuge in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), except that the Secretary may utilize such additional statutory authority as may be available to him for the conservation and management of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretative education as he deems appropriate to carry out the purposes of this Act. In the administration of the Refuge, the Secretary and the Chief of Engineers, Corps of Engineers, shall enter into such consultations and take such cooperative actions as they deem necessary and appropriate to insure that any navigational or other uses made of the Dismal Swamp Canal do not adversely affect the Refuge and, in this regard, particular attention shall be given by the Secretary and the Chief of Engineers with respect to maintaining an appropriate water level in Lake Drummond.

SEC. 3. The Secretary may acquire by donation, purchase with donated or appropriated funds, or exchange, such lands and waters and interests therein (including in-holdings) that are adjacent to the lands and waters described in subsection (a)(1) of the first section of this Act and are within the area known as the Great Dismal Swamp located in the States of Virginia and North Carolina as he determines to be suitable to carry out the purposes of this Act; except that Secretary may not acquire any such lands and waters and interests therein by purchase or exchange without first taking into account such recommendations as may result from the study required under Public Law 92–478, approved October 9, 1972 (86 Stat. 793–794).

SEC. 4 (a) Except as provided in subsection (b) of this section, there is authorized to be appropriated for the fiscal year ending June 30, 1975, not to exceed $1,000,000; for the fiscal year ending June 30, 1976, not to exceed $3,000,000; and for the fiscal year ending ending June 30, 1977, not to exceed $3,000,000.

(b) In no event shall the amount authorized to be appropriated exceed the cost estimates of the report to be submitted to the Congress by the Secretary pursuant to Public Law 92–478.

Approved August 30, 1974.

9. International Boundary Commission, United States and Mexico

22 U.S.C. 277d–34, d–39, d–41, d–42

§ 277. International Boundary Commission, United States and Mexico; study of boundary waters.

ANNUAL APPROPRIATIONS

Annual appropriations were contained in the following acts:

1972—Pub. L. 92–544, title I, § 101, Oct. 25, 1972, 86 Stat. 1110.

1971—Pub. L. 92–77, title I, § 101, Aug. 10, 1971, 85 Stat. 248.

§ 277d–34. American-Mexican Boundary Treaty, authorization for carrying out treaty provisions; investigations; land acquisition, purposes; damages, repair or compensation.

In connection with the treaty between the United

States of America and the United Mexican States to resolve pending boundary differences and maintain the Rio Grande and the Colorado River as the international boundary between the United States of America and the United Mexican States, signed November 23, 1970 (hereafter in this Act referred to as the "treaty"), the Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States, and Mexico (hereafter in this Act referred to as the "Commissioner"), is authorized—

(1) to conduct technical and other investigations relating to—

(A) the demarcation, mapping, monumentation, channel relocation, rectification, improvement, stabilization, and other matters relating to the preservation of the river boundaries between the United States and Mexico;

(B) the establishment and delimitation of the maritime boundaries in the Gulf of Mexico and in the Pacific Ocean;

(C) water resources; and

(D) the sanitation and the prevention of pollution;

(2) to acquire by donation, purchase, or condemnation, all lands or interests in lands required—

(A) for transfer to Mexico as provided in the treaty;

(B) for construction of that portion of new river channels and the adjoining levees in the territory of the United States;

(C) to preserve the Rio Grande and the Colorado River as the boundary by preventing the construction of works which may cause deflection or obstruction of the normal flow of the rivers or of their floodflows; and

(D) for relocation of any structure or facility, public or private, the relocation of which, in the judgment of the Commissioner, is necessitated by the project; and

(3) to remove, modify, or repair the damages caused to Mexico by works constructed in the United States which the International Boundary and Water Commission, United States and Mexico, as determined have an adverse effect on Mexico, or to compensate Mexico for such damages.

(Pub. L. 92–549, title I, § 101, Oct. 25, 1972, 86 Stat. 1161.)

* * * * *

§ 277d–39. Same: Hidalgo-Reynosa lands; administration; part of national wildlife refuge system.

Upon transfer of sovereignty from Mexico to the United States of the 481.68 acres of land acquired by the United States from Mexico near Hidalgo-Reynosa, administration over the portion of that land which is determined by the Commissioner not to be required for the construction and maintenance of the relocated river channel shall be assumed by the Department of the Interior; and the Department of the Interior, Fish and Wildlife Service, Bureau of Sport Fisheries and Wildlife, is authorized to plan, establish, develop, and administer such portion of the acquired lands as a part of the national wildlife refuge system. (Pub. L. 92–549, title I, § 106, Oct. 25, 1972, 86 Stat. 1162.)

* * * * *

§ 277d–41. American-Mexican Boundary Treaty, Presidio flood control project; authorization of flood-control agreement.

The Secretary of State, acting through the Commissioner, is hereby authorized to conclude with the appropriate official or officials of the Government of Mexico an agreement for a coordinated plan by the United States and Mexico for international flood control works for protection of lands along the international section of the Rio Grande in the United States and in Mexico in the Presidio-Ojinaga Valley. (Pub. L. 92–549, title II, § 201, Oct. 25, 1972, 86 Stat. 1163.)

§ 277d–42. Same; construction, operation, and maintenance of flood control works; authorization of appropriations; restrictions.

If an agreement is concluded pursuant to section 277d–41 of this title, the Commissioner is authorized to construct, operate, and maintain flood control works located in the United States having substantially the characteristics described in "Report on the Flood Control Project Rio Grande, Presidio Valley, Texas", prepared by the United States section, International Boundary and Water Commission, United States and Mexico; and there are hereby authorized to be appropriated to the Department of State for the use of the United States section of the Commission such sums as may be necessary to carry out the provisions of section 277d–41 of this title and this section. No part of any appropriation under this section shall be expended for flood control works on any land, site, or easement unless such land, site, or easement has been acquired under the treaty for other purposes or by donation and, in the case of a donation, the title thereto has been approved in accordance with existing rules and regulations of the Attorney General of the United States. (Pub. L. 92–549, title II, § 202, Oct. 25, 1972, 86 Stat. 1163.)

10. Klamath Forest National Wildlife Refuge

25 U.S.C. 564d, 564w–1

§ 564d. Management specialists; employment; duties; authorization of expenditures.

(a) The Secretary is authorized and directed to select and retain by contract, at the earliest practicable time after August 13, 1954 and after consultation with the tribe at a general meeting called for that purpose, the services of qualified management specialists who shall—

(1) cause an appraisal to be made, within not more than twelve months after their employment, or as soon thereafter as practicable, of all tribal property showing its fair market value by practicable logging or other appropriate economic units;

(2) immediately after the appraisal of the tribal property and approval of the appraisal by the Secretary, give to each member whose name appears on the final roll of the tribe an opportunity to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in the tribal management plan to be prepared pursuant to paragraph (5) of this subsection; in the case of members who are minors, persons declared incompetent by judicial proceedings, or deceased, the opportunity to make such election on their behalf shall be given to the person designated by the Secretary as the person best able to represent the interests of such member: *Provided, however,* That any member, or any heir or any devisee of any deceased member, for whom the Secretary has so designated a representative may (on his own behalf, through his natural guardian, or next friend) within one hundred and twenty days after receipt of written notice of such secretarial designation, contest the secretarial designation in any naturalization court for the area in which such member resides, by filing of a petition therein requesting designation of a named person other than the secretarial designee, and the burden shall thereupon devolve upon the Secretary to show cause why the member-designated representative should not represent the interests of such member, and the decision of such court shall be final and conclusive;

(3) determine and select the portion of the tribal property which if sold at the appraised value would provide sufficient funds to pay the members who elect to have their interests converted into money, arrange for the sale of such property, and distribute the proceeds of sale among the members entitled thereto: *Provided,* That any person whose name appears on the final roll of the tribe, or a guardian on behalf of any such person who is a minor or an incompetent, shall have the right to purchase, for his or its own account but not as an agent for others, any of such property in lots as offered for sale for not less than the highest offer received by competitive bid; any individual Indian purchaser who has elected to withdraw from the tribe may apply toward the purchase price up to 100 per centum of the amount estimated by the Secretary to be due him from the sale or taking of forest and marsh lands pursuant to subsection (b), (d), and (f) of section 564w–1 of this title, and up to 75 per centum of the amount estimated by the Secretary to be due him from the conversion of his interest in other tribal property; and if more than one right is exercised to purchase the same property pursuant to this proviso the property shall be sold to one of such persons on the basis of competitive bids: *Provided further,* That when determining and selecting the portion of the tribal property to be sold, due consideration shall be given to the use of such property for grazing purposes by the members of both groups of the tribe;

(4) cause such studies and reports to be made as may be deemed necessary or desirable by the tribe or by the Secretary in connection with the termination of Federal supervision as provided for in sections 564 to 564w–1 of this title; and

(5) cause a plan to be prepared in form and content satisfactory to the members who elect to remain in the tribe and to the Secretary for the management of tribal property through a trustee, corporation, or other legal entity. If no plan that is satisfactory both to the members who elect to remain in the tribe and to the Secretary has been prepared six months before the time limit provided in section 564e (b) of this title the Secretary shall adopt a plan for managing the tribal property, subject to the provisions of section 564n of this title.

(b) Such amounts of Klamath tribal funds as may be required for the purposes of this section shall be available for expenditure by the Secretary. In order to reimburse the tribe, in part, for expenditure of such tribal funds as the Secretary deems necessary for the purposes of carrying out the requirements of this section, there is authorized to be appropriated out of any money in the Treasury not otherwise appropriated, an amount equal to one-half of such expenditures from tribal funds, or the sum of $550,000, whichever is the lesser amount. (Aug. 13, 1954, ch. 732, § 5, 68 Stat. 718; Aug. 14, 1957, Pub. L. 85–132, § 1 (b), (d), (e), (g), 71 Stat. 347, 348; Aug. 23, 1958, Pub. L. 85–731, §§ 6—8, 73 Stat. 819.)

AMENDMENTS

1958—Subsec. (a) (3). Pub. L. 85–731, §§ 6, 7, eliminated first proviso requiring that funds payable to the withdrawing members be distributed as each $200,000 accumulates, and substituted "who has elected to withdraw from the tribe may apply toward the purchase price up to 100 per centum of the amount estimated by the Secretary to be due him from the sale or taking of forest and marsh lands pursuant to subsections (b), (d), and (f) of section 564w–1 of this title, and up to 75 per centum of the amount estimated by the Secretary to be due him from the conversion of his interest in other tribal property" for the words "may apply toward the purchase price all or any part of the sum due him from the conversion of his interest in tribal property" in the second proviso.

Subsec. (a) (5). Pub. L. 85–731, § 8, added sentence to provide that if no plan is satisfactory both to the members who elect to remain in the tribe and to the Secretary, the Secretary shall adopt a management plan.

1957—Subsec. (a) (2). Pub. L. 85–132, § 1 (d), provided that the time of election to withdraw be given after the appraisal is approved by the Secretary, and provided for election on behalf of minors, incompetents, or deceased persons by designee of Secretary.

Subsec. (a) (3). Pub. L. 85–132, § 1 (e), in the second proviso provided that any person whose name appears on the final roll of the tribe, may purchase for his own account, but not as an agent for others, any such property in lots as offered for sale, and provided that if more than one right is exercised to purchase the same property, it be sold on the basis of competitive bids.

Subsec. (a) (5). Pub. L. 85–132, § 1 (g), substituted "members who elect to remain in the tribe" for "tribe".

Subsec. (b). Pub. L. 85–132, § 1 (b), provided for partial reimbursement of the tribe for expenditures of tribal funds under this section, authorization of appropriation

of the lesser of amount equal to one-half of such expenditures, or $550,000, in lieu of former provisions which charged expenses incident to par. (3) to members who withdraw from tribe, charged expenses under pars. (4) and (5) to members who remain in tribe, and charged all other expenses under this section to interests of both groups of members.

* * * * *

§ 564w–1. Klamath Indian Forest and Klamath Marsh.

Notwithstanding the provisions of sections 564d and 564e of this title, and all Acts amendatory thereof—

(a) Designation of boundaries.

The tribal lands that comprise the Klamath Indian Forest, and the tribal lands that comprise the Klamath Marsh, shall be designated by the Secretary of the Interior and the Secretary of Agriculture, jointly.

(b) Sales; terms and conditions.

The portion of the Klamath Indian Forest that is selected for sale pursuant to section 564d (a) (3) of this title to pay members who withdraw from the tribe shall be offered for sale by the Secretary of the Interior in appropriate units, on the basis of competitive bids, to any purchaser or purchasers who agree to manage the forest lands as far as practicable according to sustained yield procedures so as to furnish a continuous supply of timber according to plans to be prepared and submitted by them for approval and inclusion in the conveyancing instruments in accordance with specifications and requirements referred to in the invitations for bids: *Provided*, That no sale shall be for a price that is less than the realization value of the units involved determined as provided in subsection (c) of this section. The terms and conditions of the sales shall be prescribed by the Secretary. The specifications and minimum requirements to be included in the invitations for bids, and the determination of appropriate units for sale, shall be developed and made jointly by the Secretary of the Interior and the Secretary of Agriculture. Such plans when prepared by the purchaser shall include provisions for the conservation of soil and water resources as well as for the management of the timber resources as hereinbefore set forth in this section. Such plans shall be satisfactory to and have the approval of the Secretary of Agriculture as complying with the minimum standards included in said specifications and requirements before the prospective purchaser shall be entitled to have his bid considered by the Secretary of the Interior and the failure on the part of the purchaser to prepare and submit a satisfactory plan to the Secretary of Agriculture shall constitute grounds for rejection of such bid. Such plans shall be incorporated as conditions in the conveyancing instruments executed by the Secretary and shall be binding on the grantee and all successors in interest. The conveyancing instruments shall provide for a forfeiture and a reversion of title to the lands to the United States, not in trust for or subject to Indian use, in the event of a breach of such conditions. The purchase price paid by the grantee shall be deemed to represent the full appraised fair market value of the lands, undiminished by the right of reversion retained by the United States in a nontrust status, and the retention of such right of reversion shall not be the basis for any claim against the United States. The Secretary of Agriculture shall be responsible for enforcing such conditions. Upon any reversion of title pursuant to this subsection, the lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16.

(c) Appraisals; notice to Congressional committees; appropriation; realization value; report to Congressional committees.

Within sixty days after August 23, 1958 the Secretary of the Interior shall contract by negotiation with three qualified appraisers or three qualified appraisal organizations for a review of the appraisal approved by the Secretary pursuant to section 564d (a) (2) of this title. In such review full consideration shall be given to all reasonably ascertainable elements of land, forest, and mineral values. Not less than thirty days before executing such contracts the Secretary shall notify the chairman of the House Committee on Interior and Insular Affairs and the chairman of the Senate Committee on Interior and Insular Affairs of the names and addresses of the appraisers selected. The cost of the appraisal review shall be paid from tribal funds which are made available for such purpose, subject to full reimbursement by the United States, and the appropriation of funds for that purpose is authorized. Upon the basis of a review of the appraisal heretofore made of the forest units and marsh lands involved and such other materials as may be readily available, including additional market data since the date of the prior appraisal, but without making any new and independent appraisal, each appraiser shall estimate the fair market value of such forest units and marsh lands as if they had been offered for sale on a competitive market without limitation on use during the interval between the adjournment of the Eighty-fifth Congress and the termination date specified in section 564e (b) of this section. This value shall be known as the realization value. If the three appraisers are not able to agree on the realization value of such forest units and marsh lands, then such realization values shall be determined by averaging the values estimated by each appraiser. The Secretary shall report such realization values to the chairman of the House Committee on Interior and Insular Affairs and to the chairman of the Senate Committee on Interior and Insular Affairs not later than January 15, 1959. No sale of forest units that comprise the Klamath Indian forest designated pursuant to subsection (a) of this section shall be made under the provisions of sections 564 to 564w–1 of this title prior to April 1, 1959.

(d) Unsold forest units and marsh lands; title after publication in Federal Register; aggregate realization value; appropriation.

If all of the forest units offered for sale in accordance with subsection (b) of this section are not sold before April 1, 1961, the Secretary of Agriculture shall publish in the Federal Register a proclamation taking title in the name of the United States to as many of the unsold units or parts thereof as have, together with the Klamath Marsh lands acquired pursuant to subsection (f) of the section, an aggregate realization value of not to exceed $90,000,000, which shall be the maximum amount payable for lands acquired by the United States pursuant to sections 564 to 564w–1 of this title. Compensation for the forest lands so taken shall be the realization value of the lands determined as provided in subsection (c) of this section, unless a different amount is provided by law enacted prior to the proclamation of the Secretary of Agriculture. Appropriation of funds for that purpose is authorized. Payment shall be made as soon as possible after the proclamation of the Secretary of Agriculture. Such lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16. Any of the forest units that are offered for sale and that are not sold or taken pursuant to subsection (b) or (d) of this section shall be subject to sale without limitation on use in accordance with the provisions of section 564d of this title.

(e) Sale of retained lands to Secretary of Agriculture.

If at any time any of the tribal lands that comprise the Klamath Indian Forest and that are retained by the tribe are offered for sale other than to members of the tribe, such lands shall first be offered for sale to the Secretary of Agriculture, who shall be given a period of twelve months after the date of each such offer within which to purchase such lands. No such lands shall be sold at a price below the price at which they have been offered for sale to the Secretary of Agriculture, and if such lands are reoffered for sale they shall first be reoffered to the Secretary of Agriculture. The Secretary of Agriculture is authorized to purchase such lands subject to such terms and conditions as to the use thereof as he may deem appropriate, and any lands so acquired shall thereupon become national forest lands subject to the laws that are applicable to lands acquired pursuant to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16.

(f) Klamath Forest National Wildlife Refuge; appropriation.

The lands that comprise the Klamath Marsh shall be a part of the property selected for sale pursuant to section 564d(a)(3) of this title to pay members who withdraw from the tribe. Title to such lands is taken in the name of the United States, effective the earliest date after September 30, 1959, when the Secretary of the Interior determines that funds for the payment of the purchase price are available from the sale of stamps under the Migratory Bird Hunting Stamp Act of March 16, 1934, as amended. Such lands are designated as the Klamath Forest National Wildlife Refuge, which shall be administered in accordance with the law applicable to areas acquired pursuant to section 718d of Title 16, as amended or supplemented. Compensation for said taking shall be the realization value of the lands determined in accordance with subsection (c) of this section, and shall be paid out of funds in the Treasury of the United States, which are authorized to be appropriated for that purpose.

(g) Homesites.

Any person whose name appears on the final role of the tribe, and who has since December 31, 1956, continuously resided on any lands taken by the United States by subsections (d) and (f) of this section, shall be entitled to occupy and use as a homesite for his lifetime a reasonable acreage of such lands, as determined by the Secretary of Agriculture, subject to such regulations as the Secretary of Agriculture may issue to safeguard the administration of the national forest and as the Secretary of the Interior may issue to safeguard the administration of the Klamath Forest National Wildlife Refuge.

(h) Administration of outstanding timber sales contracts.

If title to any of the lands comprising the Klamath Indian Forest is taken by the United States, the administration of any outstanding timber sales contracts thereon entered into by the Secretary of the Interior as trustee for the Klamath Indians shall be administered by the Secretary of Agriculture.

(i) Right of United States to use roads.

All sales of tribal lands pursuant to subsection (b) of this section or pursuant to section 564d of this title on which roads are located shall be made subject to the right of the United States and its assigns to maintain and use such roads.

(Aug. 13, 1954, ch. 732, § 8, as added Aug. 23, 1958, Pub L. 85–731, § 1, 72 Stat. 816, and amended Sept. 9, 1959, Pub. L. 86–247, 73 Stat. 477.)

AMENDMENTS

1959—Subsec. (f). Pub. L. 86–247 changed the date for the Federal acquisition of the Klamath Indian Marsh from April 1, 1961, to the earliest date after September 30, 1959, that funds are available to pay for the property from the sale of stamps.

11. Migratory Bird Treaty Act

16 U.S.C. 701–711

(See Protection of Migratory Game and Insectivorous Birds under this title)

12. Minnesota Valley National Wildlife Refuge

P.L. 94–466 (90 Stat. 1992)

AN ACT

To provide for a national wildlife refuge in the Minnesota River Valley, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Minnesota Valley National Wildlife Refuge Act".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares the following:

(1) The Lower Minnesota River Valley, which provides habitat for a large number of migratory waterfowl, fish, and other wildlife species, is a unique environmental resource.

(2) This valley is located close to a large metropolitan area and, accordingly, it is of great value as a source of environmental education, recreational opportunities, and interpretive programs for hundreds of thousands of urban dwellers.

(3) This valley is currently threatened with spoilation, removal from public assess, and ecological downgrading, through commercial and industrial development.

(4) Despoilment of this valley and its flood plain will result in the permanent loss of unique social, educational, and environmental assets.

(b) POLICY.—It is therefore declared to be the policy of the Congress in this Act to preserve the Minnesota River Valley through the establishment of the Minnesota Valley National Wildlife Refuge.

DEFINITIONS

SEC. 3. As used in this Act:

(1) The terms "conserve" and "conservation" mean to use, and the use of, methods and procedures which are necessary to assure, to the maximum extent practicable, the continued existence of populations of fish and wildlife. Such methods and procedures may include, but are not limited to, all activities associated with scientific resource management, including research, census, law enforcement, habitat acquisition, and public information and education.

(2) The term "interests therein" means any property interest in lands and waters, including, but not limited to, a leasehold, an easement, a future interest, or an equitable use.

(3) The term "refuge" means the Minnesota Valley National Wildlife Refuge, established pursuant to section 4 of this Act.

(4) The term "Secretary" means the Secretary of the Interior, acting through the United States Fish and Wildlife Service.

(5) The term "State" means to the State of Minnesota and any political subdivision thereof.

(6) The term "wildlife recreation area" means the wildlife recreation area established adjacent to the refuge, pursuant to section 5 of this Act.

THE REFUGE

SEC. 4. (a) ESTABLISHMENT.—The Secretary shall establish, in accordance with this section, the Minnesota Valley National Wildlife Refuge by publication of a notice to that effect in the Federal Register upon completion of the comprehensive plan pursuant to section 6 of this Act. The refuge shall consist of—

(1) approximately 9,500 acres of lands, marshes, submerged lands, and open waters in the lower Minnesota River Valley, which are depicted as a wildlife refuge on a map dated November 1975 and entitled "Official Map—Minnesota Valley National Wildlife Refuge-Recreation Area", which shall be on file and available for public inspection in the offices of the United States Fish and Wildlife Service of the Department of the Interior; and

(2) any additional lands, waters, and interests therein, which the Secretary may acquire and designate for inclusion in the refuge.

(b) ACQUISITION AND ADMINISTRATION.—(1) The Secretary shall, within 6 years afte the date of enactment of this Act, acquire lands, waters, and interests therein, within the boundaries of the refuge, by (A) donation; (B) purchase (with donated, transferred, or appropriated funds); or (C) exchange.

(2) With respect to the Black Dog Lake unit, as identified on the map referred to in subsection (a)(1) of this section, the Secretary may not acquire any lands, waters, or interests therein unless such acquisition is compatible with the continued operation of the electric power generation plant presently located within such unit. The Secretary may negotiate and enter into an agreement, with the owner of such powerplant, for the joint or cooperative conservation and management of such unit.

(3) The Secretary shall develop and administer the lands, waters, and interests therein, which are acquired for the refuge, in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 688dd et seq.). The Secretary may also exercise any other authority available to him for the conservation and management of wildlife and natural resources, the development of wildlife recreational opportunities, wildlife interpretation, and environmental education, to the extent deemed by him to be appropriate to carry out the purposes of this Act.

(c) WILDLIFE INTERPRETATION AND EDUCATION CENTER.—The Secretary shall construct, administer, and maintain, at an appropriate site within the refuge, a wildlife interpretation and education center. Such center shall be designed and operated to promote environmental education and to provide an opportunity for the study and enjoyment of wildlife in its natural habitat.

(d) REVENUE SHARING.—Payments made, in accordance with the Refuge Revenue Sharing Act (16 U.S.C. 715s), to the counties in which units of the refuge are located shall be distributed by such counties to municipalities and townships on the same pro rata basis as is used in the distribution of real estate taxes.

THE WILDLIFE RECREATION AREA

SEC. 5. (a) GENERAL.—The Secretary shall establish, in cooperation with the State and in an area adjacent to the refuge, a wildlife recreation area by publication of a notice to that effect in the Federal Register upon completion of the comprehensive plan pursuant to section 6 of this Act. Such area shall consist of the lands, waters, and interests therein which are depicted as a recreation area on the map referred to in section 4(a)(1) of this Act. The wildlife recreation area shall, in general, consist of—

(1) those portions of the Lower Minnesota River floodplain and which are necessary for one or more of the following: public access to such area; safety; the well-being of the visiting public; and the operation and maintenance of such area; and

(2) any additional areas which are adjacent to such floodplain and which are located between the city of Jordan, Minnesota, and Fort Snelling State Park, excluding the industrialized component thereof located in the municipalities of Savage, Chaska, Shakopee, and Burnsville, Minnesota.

(b) ACQUISITION AND ADMINISTRATION.—Lands, waters, and interests therein, which are within the boundaries of the wildlife recreation area, shall, with the agreement of the State, be acquired, developed, and administered by the State (in cooperation with the Secretary) in accordance with the provisions of the comprehensive plan devloped under section 6 of this Act.

COMPREHENSIVE PLAN

SEC. 6. (a) GENERAL.—Within 3 years after the date of enactment of this Act, the Secretary shall, in cooperation with the State and political subdivisions thereof, develop a comprehensive plan for the conservation, protection, preservation, and interpretation of the Minnesota Valley National Wildlife Refuge and the adjacent wildlife recreation area.

(b) MANAGEMENT CATEGORIES.—The plan required by subsection (a) of this section shall delineate and provide appropriate management guidelines for the following two categories of property:

(1) Category I.—The Minnesota Valley National Wildlife Refuge, to be acquired and managed by the Secretary pursuant to section 4(b) of this Act.

(2) Category II.—Public nature-recreation areas, to be acquired (in fee or by lease, easement, donation, or other agreement) and managed by the State (in cooperation with the Secretary) pursuant to section 5(b) of this Act.

(c) OTHER REQUIREMENTS.—The plan required by subsection (a) of this section shall—

(1) provide for the Minnesota Valley Trail Corridor, authorized by Minnesota Statute, 1969, section 85.198, as an integral part of the Minnesota Valley National Wildlife Refuge and the adjacent wildlife recreation area; and

(2) contain such other provisions relating to public use, law enforcement, wildlife conservation, environmental education and interpretation, and other matters as the Secretary and the State deem necessary to preserve, protect, and enhance the refuge-recreation area and to carry out the purposes of this Act.

FINANCIAL ASSISTANCE

SEC. 7. (a) GRANTS.—The Secretary shall provide sufficient financial assistance to the State to enable it to acquire and develop lands, waters, and interests therein in the wildlife recreation area. A grant made under this section shall only be used with respect to lands, waters, and interests therein which and acquired by the State after the establishment of the wildlife recreation area. The Secretary may reimburse the State for lands, waters, and interests therein which are acquired prior to the establishment of the wildlife recreation area if such lands, waters, and interests therein are contained within the area at the time of its establishment. Such grants shall be subject to such other terms and conditions as may be prescribed by the Secretary. Any grants made from the Land and Water Conservation Fund shall be subject to the provisions of section 6 of the Land and Water Conservation Fund Act, as amended (16 U.S.C. 4601–8).

(b) LIMITATIONS.—Any payment made by the Secretary under this section shall be subject to the following condition: The conversion, use, or disposal of any lands, waters, and interests therein which are required by the State, directly or indirectly, with Federal financial assistance provided

under this section, for purposes contrary to the purposes of this Act (as determined by the Secretary, shall create in the United States a right to compensation from the State in an amount equal to the fair market value of the land at the time of conversion, use or disposal, or an amount equal to the Federal payment for acquisition and development of the land, whichever is greater.

SPOIL SITES

SEC. 8. The Secretary and the United States Corps of Engineers shall assist appropriate local authorities in the disposal of dredge material and in the designation of sites for deposit of dredge material, so as to minimize the disruption of wildlife and the reduction of scenic and recreational values and so as to assure the continuation of navigation on the riverway. The Secretary may acquire such alternative sites, outside the boundary of the refuge-recreation area, as may be necessary, in exchange for sites existing in the area on the date of enactment of this Act. The value of any properties so exchanged shall be approximately equal as determined by the Secretary or, if not, such value shall be equalized by the payment of cash, to the owners of the property within the refuge-recreation area or to the Secretary, as the circumstances require. The Secretary is authorized to expend not more than 20 per centum of the funds appropriated for acquisition of the refuge under section 10(a) of this Act to assist in the disposal of dredge material and to purchase alternative sites for deposit of dredge material as may be necessary outside the boundaries of the refuge and recreation area.

CONTINUED PUBLIC SERVICES

SEC. 9. Nothing contained in this Act shall be construed as prohibiting or preventing the provision of vital public services, including—

(1) the continuation of commercial navigation in the main navigation channel of the Minnesota River which lies within the refuge-recreation area;

(2) the construction, improvement, and replacement of highways and bridges, whether or not the highway is a Federal-aid highway; or

(3) any other activity which the Secretary determines to be necessary;

if the provision of such services is otherwise in accordance with law. Any activity referred to in this section shall be carried out so as to minimize the disruption of the wildlife and the reduction of recreational and scenic values of the area, consistent with economic feasibility.

SEC. 10. (a) ACQUISITION.—There are authorized to be appropriated such amounts as may be necessary for acquisition of lands, waters, and interests therein in the refuge-recreation area, pursuant to sections 4(b)(1) and (7)(a) of this Act, except that such sums shall not exceed a total of $14,500,000 for the period beginning October 1, 1977, and ending September 30, 1983.

(b) DEVELOPMENT.—There are authorized to be appropriated such amounts as may be necessary for the development of the refuge-recreation area, except that such sums shall not exceed $6,000,000 for the period beginning October 1, 1977, and ending September 30, 1986. Not more than $500,000 of such sums shall be used for the development of the comprehensive plan pursuant to section 6 of this Act.

13. Okefenokee National Wildlife Refuge

Pub. L. 84-810 (70 Stat. 668)

AN ACT

To provide for the protection of the Okefenokee National Wildlife Refuge, Georgia, against damage from fire and drought.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the purpose of protecting the natural features and the very substantial public values represented in the Okefenokee National Wildlife Refuge, Georgia, from disastrous fires such as those which swept over 80 per centum of the area between October 1954 and June 1955, and for the purpose of safeguarding the forest resources on more than four hundred thousand acres of adjoining lands recently damaged by wildfires originating in or sustained by the desiccated peat deposits in the Okefenokee Swamp, the Secretary of the Interior shall construct a continuous perimeter road around the Okefenokee National Wildlife Refuge with additional fire access roads (leading from such perimeter road) in and around such refuge; and for the purpose of protecting such refuge against damage from drought he shall construct a sill and dike in the Suwanee River near the point where the river leaves the refuge together with additional sills in the Old Saint Marys River Canal and at such other points within the refuge as he may determine to be necessary to prevent drainage of the Okefenokee Swamp during periods of drought such as those which occurred in 1953–1955 and other years.

(b) The Secretary of the Interior is authorized and directed to conduct such surveys as he deems necessary to provide more adequate protection for the Okefenokee National Wildlife Refuge, through the development and construction of perimeter and fire access roads and the installation of water controls as described in subsection (a), against the damaging effects of fire and drought.

(c) The Secretary of the Interior is authorized and directed to cooperate with State and local authorities in protecting public and private lands from wildfires originating in or sustained by the Okefenokee National Wildlife Refuge by integrating the perimeter road and fire access roads with

existing woods roads in such manner as he determines will best carry out the purpose of this Act.

SEC. 2. There are hereby authorized to be appropriated to carry out this Act (1) the sum of $453,500 for the construction of a continuous perimeter road around the Okefenokee National Wildlife Refuge and approximately one hundred and sixty-two miles of fire access roads, together with necessary bridges and culverts, in and around such refuge, and (2) the sum of $275,000 for the construction of a sill and dike in the Suwanee River and sills at other appropriate points in the Okefenokee National Wildlife Refuge.

Approved July 26, 1956.

14. Parker River National Wildlife Refuge

Pub. L. 80–579 (62 Stat. 293–4)

AN ACT

To reduce in area the Parker River National Wildlife Refuge in Essex County, Massachusetts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Parker River National Wildlife Refuge in Essex County, Massachusetts, is hereby reduced in area by eliminating therefrom those portions of the refuge designated and known as the Crane Pond, Downfall, and Mill Creek Areas, and the Secretary of the Interior is authorized and directed to dispose of all of the interests of the United States in such areas in accordance with the provisions of this Act.

SEC. 2. (a) Within ninety days following the date of enactment of this Act, the Secretary of the Interior shall mail, to each prior owner of such lands within the three areas designated in section 1 as have been acquired by the United States by direct purchase or the ownership of which has been determined and compensation therefor paid to the prior owner thereof in the condemnation proceeding entitled "United States v. 12,367.47 Acres More or Less of Land Situate in Essex County, Massachusetts, Civil No. 7010, in the District Court of the United States for the District of Massachusetts", or in any other condemnation proceeding instituted by the United States for the acquisition of lands for the Parker River National Wildlife Refuge, a notice stating in effect that title to the lands acquired from such prior owner will be reconveyed to that prior owner upon payment to the United States, within sixty days after the receipt of such notice, of an amount equal to the purchase price paid by the United States for such lands. Upon receipt of payment from the prior owner of the lands in question, the Secretary of the Interior shall convey all right, title, and interest of the United States in such land to the prior owner thereof.

(b) With respect to such other lands as lie within the three areas designated in section 1 and are included in the condemnation proceeding or proceedings referred to, and compensation for the taking of which has not been paid to the prior owners thereof, the Attorney General of the United States is authorized and directed to exclude the same from the condemnation proceedings entitled "United States v. 12,367.47 Acres More or Less of Land Situate in Essex County, Massachusetts, Civil No. 7010, in the District Court of the United States for the District of Massachusetts", or any other condemnation proceeding instituted by the United States for the acquisition of lands for the Parker River National Wildlife Refuge, in accordance with the provisions of the Act of October 21, 1942 (56 Stat. 797; 40 U.S.C., Supp. 258f), within ninety days following the date of enactment of this Act or within such additional period as the court in such proceeding may determine to be necessary to effectuate the purposes of this Act.

(c) Such lands lying within the boundaries of the areas designated in section 1, the title to which cannot be returned to the prior owners thereof in accordance with the provisions of this section, shall be disposed of in such manner and at such prices as the Secretary of the Interior may deem to be in the best interests of the United States.

SEC. 3. All moneys paid to the United States in accordance with the provisions of section 2, for the reconveyance of lands to prior owners or in connection with the disposition of such lands as provided therein, all moneys on deposit with the District Court of the United States for the District of Massachusetts for payment as compensation for the taking of lands within the three areas designated in section 1 as are excluded by stipulation from such condemnation proceeding or proceedings, in accordance with the provisions of section 2, shall be credited to the then current appropriation for carrying out the provisions of section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718–718h), as amended, shall remain available for such purposes until expended.

SEC. 4. In the administration of the Parker River National Wildlife Refuge, the Secretary of the Interior is directed to provide assistance to and cooperate with Federal, State, and public or private agencies and organizations in protecting, developing, and maintaining the edible clam resources found within and adjacent to the Parker River National Wildlife Refuge, all in accordance with the provisions of section 1 of the Act of August 14, 1946 (Public Law Numbered 732, Seventy-ninth Congress, second session), and Acts supplementary thereto within the limits of available appropriations.

SEC. 5. Management and administration of the propagation and taking of clams within the boundaries of the Parker River National Wildlife Refuge shall continue to be exercised in accordance with State and local laws and ordinances, but subject to the provisions of section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222), as amended.

Approved June 3, 1948.

15. Predatory Mammal Control Program

7 U.S.C. 426–426b

§ 426. Predatory and other wild animals; eradication and control; investigations, experiments, and tests by Secretary of Agriculture; cooperation with other agencies.

The Secretary of Agriculture is authorized and directed to conduct such investigations, experiments, and tests as he may deem necessary in order to determine, demonstrate, and promulgate the best methods of eradication, suppression, or bringing under control on national forests and other areas of the public domain as well as on State, Territory, or privately owned lands of mountain lions, wolves, coyotes, bobcats, prairie dogs, gophers, ground squirrels, jack rabbits, and other animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur-bearing animals, and birds, and for the protection of stock and other domestic animals through the suppression of rabies and tularemia in predatory or other wild animals; and to conduct campaigns for the destruction or control of such animals: *Provided*, That in carrying out the provisions of this section the Secretary of Agriculture may cooperate with States, individuals, and public and private agencies, organizations, and institutions. (Mar. 2, 1931, ch. 370, § 1, 46 Stat. 1468.)

§ 426b. Same; expenditures; execution of functions by Secretary.

The Secretary of Agriculture is authorized to make such expenditures for equipment, supplies, and materials, including the employment of persons and means in the District of Columbia and elsewhere, and to employ such means as may be necessary to execute the functions imposed upon him by section 426 of this title. (Mar. 2, 1931, ch. 370, § 3, 46 Stat. 1469.)

16. Protection of Bald and Golden Eagles

16 U.S.C. 668–668d

§ 668. Bald and golden eagles.

(a) Prohibited acts; criminal penalties.

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in sections 668 to 668d of this title, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to sections 668 to 668d of this title, shall be fined not more than $5,000 or imprisoned not more than one year or both: *Provided*, That in the case of a second or subsequent conviction for a violation of this section committed after October 23, 1972, such person shall be fined not more than $10,000 or imprisoned not more than two years, or both: *Provided further*, That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: *Provided further*, That one-half of any such fine, but not to exceed $2,500, shall be paid to the person or persons giving information which leads to conviction: *Provided further*, That nothing in said sections shall be construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to June 8, 1940, and that nothing in said sections shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition to said setions of the provisions relating to preservation of the golden eagle.

(b) Civil penalties.

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in sections 668 to 668d of this title, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle, commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to sections 668 to 668d of this title, may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered by the Secretary. For good cause shown, the Secretary may remit or mitigate any such penalty. Upon any failure to pay the penalty assessed under this section, the Secretary may request the Attorney General to institute

a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing any such action, the court must sustain the Secretary's action if supported by substantial evidence.

(c) Cancellation of grazing agreements.

The head of any Federal agency who has issued a lease, license, permit, or other agreement authorizing the grazing of domestic livestock on Federal lands to any person who is convicted of a violation of sections 668 to 668d of this title or of any permit or regulation issued hereunder may immediately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to this section. (As amended Oct. 23, 1972, Pub. L. 92–535, § 1, 86 Stat. 1064.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–535, § 1(1)–(3), designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted "shall knowingly or with wanton disregard for the consequences of his act take" for "shall take", increased the fine and imprisonment terms from $500 or six months to $5,000 or one year, and added provisions that a second conviction carry a penalty of $10,000 fine or imprisonment of not more than two years, that each taking constitute a separate offense, and that inforcers be rewarded one-half of the fine not exceeding $2,500.

Subsecs. (b), (c). Pub. L. 92–535, § 1(4), added subsecs. (b) and (c).

1962—Pub. L. 87–884 extended the prohibitions against the enumerated acts to the golden eagle and changed the proviso by substituting "bald eagle", "June 8, 1940" and "and that nothing in said sections shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition to said sections of the provisions relating to preservation of the golden eagle" for "such eagle," "the effective date of said sections" and "but the proof of such taking shall lie upon the accused in any prosecution under said sections", respectively.

1959—Pub. L. 86–70 eliminated words "except the Territory of Alaska," which followed "subject to the jurisdiction thereof,".

§ 668a. Same; taking and using for scientific, exhibition and religious purposes.

Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, he may authorize the taking of such eagles pursuant to regulations which he is hereby authorized to prescribe: *Provided*, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State, in accordance with regulations established under the provisions of this section, in such part or parts of such State and for such periods as the Secretary determines to be necessary to protect such interests: *Provided further*, That bald eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior: *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles for the purposes of falconry, except that only golden eagles which would be taken because of depredations on livestock or wildlife may be taken for purposes of falconry. (As amended Oct. 23, 1972, Pub. L. 92–535, § 2, 86 Stat. 1065.)

AMENDMENTS

1972—Pub. L. 92–535 added proviso that the Secretary of the Interior may permit the taking, possession and transportation of golden eagles for the purposes of falconry with exception that only golden eagles that cause depredations on livestock and wildlife may be taken for falconry.

1962—Pub. L. 87–884 extended the provisions of the section to the golden eagle, permitted the taking of specimens for the religious purposes of Indian tribes and authorized the taking of golden eagles for purpose of seasonally protecting domesticated flocks and herds.

§ 668b. Same; enforcement.

(a) Arrest; search; issuance and execution of warrants and process.

Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of sections 668 to 668d of this title may, without warrant, arrest any person committing in his presence or view a violation of sections 668 to 668d of this title or of any permit or regulations issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of sections 668 to 668d of this title; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of sections 668 to 668d of this title, and by said agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of sections 668 to 668d of this title. Any judge of any court established under the laws of the United States, and any United States commissioner may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(b) Forfeiture.

All bald or golden eagles, or parts, nests, or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported, or imported contrary to the provisions of sections 668 to 668d of this title, or of any permit or regulation issued hereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid in the

taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bird, or part, nest, or egg thereof, in violation of sections 668 to 668d of this title or of any permit or regulation issued hereunder shall be subject to forfeiture to the United States.

(c) Customs laws applied.

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of sections 668 to 668d of this title, insofar as such provisions of law are applicable and not inconsistent with the provisions of sections 668 to 668d of this title: *Provided*, That all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of sections 668 to 668d of this title, be exercised or performed by the Secretary of the Interior or by such persons as he may designate. (As amended Oct. 23, 1972, Pub. L. 92–535, § 3, 86 Stat. 1065.)

§ 668c. Same; definitions.

As used in sections 668 to 668d of this title "whoever" includes also associations, partnerships, and corporations; "take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb; "transport" includes also ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage, or transportation. (As amended Oct. 23, 1972, Pub. L. 92–535, § 4, 86 Stat. 1065.)

§ 668d. Same; availability of appropriations for Migratory Bird Treaty Act.

Moneys now or hereafter available to the Secretary of the Interior for the administration and enforcement of sections 703 to 708, and 709a to 711 of this title shall be equally available for the administration and enforcement of sections 668 to 668d of this title. (June 8, 1940, ch. 278, § 5, 54 Stat. 251.)

17. Protection of Migratory Game and Insectivorous Birds

16 U.S.C. 701–718h

GENERALLY

§ 701. Game and wild birds; preservation.

The duties and powers of the Department of the Interior include the preservation, distribution, introduction, and restoration of game birds and other wild birds. The Secretary of the Interior is authorized to adopt such measures as may be necessary to carry out the purposes of this section and section 667e of this title, and to purchase such game birds and other wild birds as may be required therefor, subject, however, to the laws of the various States and Territories. The object and purpose of this section and section 667e of this title, is to aid in the restoration of such birds in those parts of the United States adapted thereto where the same have become scarce or extinct, and also to regulate the introduction of American or foreign birds or animals in localities where they have not heretofore existed.

The Secretary of the Interior shall from time to time collect and publish useful information as to the propagation, uses, and preservation of such birds.

And the Secretary of the Interior shall make and publish all needful rules and regulations for carrying out the purposes of said sections, and shall expend for said purposes such sums as Congress may appropriate therefor. (May 25, 1900, ch. 553, § 1, 31 Stat. 187; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 702. Importation of eggs of game birds for propagation.

The Secretary of the Interior shall have the power to authorize the importation of eggs of game birds for purposes of propagation, and he shall prescribe all necessary rules and regulations governing the importation of eggs of said birds for such purposes. (June 3, 1902, ch. 983, 32 Stat. 285; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 703. Taking, killing, or possessing migratory birds unlawful.

Unless and except as permitted by regulations made as hereinafter provided in sections 702 to 711 of this title, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, and the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972. (As amended June 1, 1974, Pub. L. 93–300, § 1, 88 Stat. 190.)

AMENDMENTS

1974—Pub. L. 93–300 substituted "any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof" for "any part, nest, or egg of any such birds", and included the convention between the United States and the Government of Japan concluded March 4, 1972.

§ 704. Determination as to when and how migratory birds may be taken, killed, or possessed.

Subject to the provisions and in order to carry out the purposes of the conventions, referred to in section 703 of this title, the Secretary of the Interior is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President. (July 3, 1918, ch. 128, § 3, 40 Stat. 755; June 20, 1936, ch. 634, § 2, 49 Stat. 1556; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

AMENDMENTS

1936—Act June 20, 1936, substituted "conventions" for "convention" wherever appearing.

§ 705. Transportation or importation of migratory birds; when unlawful.

It shall be unlawful to ship, transport, or carry, by any means whatever, from one State, Territory, or district to or through another State, Territory, or district, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the State, Territory, or district in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried. (July 3, 1918,

ch. 128, § 4, 40 Stat. 755; June 20, 1936, ch. 634, § 4, 49 Stat. 1556; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Dec. 5, 1969, Pub. L. 91–135, § 10, 83 Stat. 282.)

AMENDMENTS

1969—Pub. L. 91–135 repealed the second par., which prohibited the shipment of wild game mammals or parts thereof by any person of the United States to and from Mexico, except by permit from the Secretary of the Interior.

1936—Act June 20, 1936, added last sentence.

§ 706. Arrests; search warrants.

Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of sections 703 to 711 of this title shall have power, without warrant, to arrest any person committing a violation of said sections in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of said sections; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulations made pursuant thereto shall, when found, be seized by any such employee, or by any marshal or deputy marshal, and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of said sections or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of as directed by the court having jurisdiction. (July 3, 1918, ch. 128, § 5, 40 Stat. 756; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 707. Violations and penalties; forfeitures.

(a) Except as otherwise provided in this section, any person, association, partnership, or corporation who shall violate any provisions of said conventions or of sections 703 to 711 of this title, or who shall violate or fail to comply with any regulation made pursuant to said sections shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or be imprisoned not more than six months, or both.

(b) Whoever, in violation of sections 703 to 711 of this title, shall—

(1) take by any manner whatsoever any migratory bird with intent to sell, offer to sell, barter or offer to barter such bird, or

(2) sell, offer for sale, barter or offer to barter, any migratory bird shall be guilty of a felony and shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(c) All guns, traps, nets and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or attempting to take, capture, or kill any migratory bird in violation of sections 703 to 711 of this title with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of said sections shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating said sections and upon conviction for such violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of said sections. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary of the Interior. (July 3, 1918, ch. 128, § 6, 40 Stat. 756; June 20, 1936, ch. 634, § 2, 49 Stat. 1556; Sept. 8, 1960, Pub. L. 86–732, 74 Stat. 866.)

AMENDMENTS

1960—Pub. L. 86–732 designated existing provisions as subsec. (a), and inserted words "Except as otherwise provided in this section" therein, and added subsecs. (b) and (c).

1936—Act June 20, 1936 substituted "conventions" for "convention".

§ 708. State or Territorial laws or regulations.

Nothing in sections 703 to 711 of this title shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said conventions or of said sections, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section 704 of this title. (July 3, 1918, ch. 128, § 7, 40 Stat. 756; June 20, 1936, ch. 634, § 2, 49 Stat. 1556.)

§ 709. Migratory birds, nests, or eggs for scientific or propagating purposes.

CODIFICATION

Section, act July 3, 1918, ch. 128, § 8, 40 Stat. 756, authorized taking and use of migratory birds, nests, or eggs for scientific or propagating purposes until adoption and approval, pursuant to section 704 of this title, of regulations dealing therewith. Regulations were promulgated by Proc. July 31, 1918, 40 Stat. 1812.

§ 709a. Authorization of appropriations.

There is hereby authorized to be appropriated, from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and to accomplish the purposes of said conventions and of sections 703 to 711 of this title and regulations made pursuant thereto, and the Secretary of the Interior is authorized out of such moneys to employ in the city of Washington and elsewhere such persons and means as he may deem necessary for such purpose and may cooperate with local authorities in the protection of migratory birds and make the necessary investigations connected therewith. (July 3, 1918, ch. 128, § 9, as added June 20, 1936, ch. 634, § 5, 49 Stat. 1556, and amended 1939 Reorg. Plan

No. II, § 4 (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.)

§ 710. Partial invalidity; short title.

If any clause, sentence, paragraph, or part of sections 703 to 711 of this title, which shall be known by the short title of the "Migratory Bird Treaty Act", shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. (July 3, 1918, ch. 128, §§ 1, 10, 40 Stat. 755, 757.)

§ 711. Breeding and sale for food supply.

Nothing in sections 703 to 710 of this title shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulation for the purpose of increasing the food supply. (July 3, 1918, ch. 128, § 12, 40 Stat. 757.)

MIGRATORY BIRD CONSERVATION

§ 715. Short title.

Sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title shall be known by the short title of "Migratory Bird Conservation Act." (Feb. 18, 1929, ch. 257, § 1, 45 Stat. 1222.)

§ 715a. Migratory Bird Conservation Commission; creation; composition; duties; approval of areas of land and water recommended for purchase or rental.

A commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of the Interior, as chairman, the Secretary of Transportation, the Secretary of Agriculture and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of the Interior for purchase or rental under sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. Any Member of the House of Representatives who is a member of the commission, if reelected to the succeeding Congress, may serve on the commission notwithstanding the expiration of a Congress. Any vacancy on the commission shall be filled in the same manner as the original appointment. The ranking officer of the branch or department of a State to which is committed the administration of its game laws, or his authorized representative, and in a State having no such branch or department, the governor thereof, or his authorized representative, shall be a member ex officio of said commission for the purpose of considering and voting on all questions relating to the acquisition, under said sections, of areas in his State. For purposes of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title, the purchase or rental of any area of land, water, or land and water includes the purchase or rental of any interest in any such area of land, water, or land and water. (Feb. 18, 1929, ch. 257, § 2, 45 Stat. 1222; 1939 Reorg. Plan No. II, § 4(f), (h), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433, 1434; Mar. 2, 1968, Pub. L. 90–261, 82 Stat. 39; Pub. L. 94–215, § 4, Feb. 17, 1976, 90 Stat. 190.)

AMENDMENTS

1976—Pub. L. 94–215 added the last sentence to this section.

§ 715b. Same; annual report.

The commission created by section 715a of this title shall, through its chairman, annually report in detail to Congress, not later than the first Monday in December, the operations of the commission during the preceding fiscal year. (Feb. 18, 1929, ch. 257, § 3, 45 Stat. 1223.)

§ 715c. Areas recommended for approval; character.

The Secretary of the Interior shall recommend no area for purchase or rental under the terms of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title except such as he shall determine is necessary for the conservation of migratory birds. (Feb. 18, 1929, ch. 257, § 4, 45 Stat. 1223; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Oct. 15, 1966, Pub. L. 89–669, § 7(a), 80 Stat. 929.)

§ 715d. Purchase or rental of approved areas; gifts and devises; United States lands.

The Secretary of the Interior is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission, at the price or prices fixed by said commission, and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes, and to pay the purchase or rental price and expenses incident to the location, examination, and survey of such areas and the acquisition of title thereto, including options when deemed necessary by the Secretary of the Interior from moneys to be appropriated hereunder by Congress from time to time: *Provided*, That no lands acquired, held, or used by the United States for military purposes shall be subject to any of the provisions of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title. (Feb. 18, 1929, ch. 257, § 5, 45 Stat. 1223; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§§ 715d–1, 715d–2. Repealed. Pub. L. 89–669, § 8(a), Oct. 15, 1966, 80 Stat. 930.

Sections, act June 15, 1935, ch. 216, title III, §§ 302, 303, 49 Stat. 382, provided for acceptance of land in exchange for other land or timber, etc. rights and for acceptance of land in exchange for patent to nonmineral public land, and is now covered by section 668dd(b)(3) of this title.

§ 715d–3. Allocation of funds for acquisition of refuges.

CODIFICATION

Section, act June 15, 1935, ch. 261, title V, § 501, 49 Stat. 383, authorized President to allocate out of appropriation made to him by resolution of April 8, 1935, a sum for acquisition of areas for bird sanctuaries and refuges.

§ 715e. Same; examination of title; easements and reservations.

The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General or his designee, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections, but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under said sections or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time. (Feb. 18, 1929, ch. 257, § 6, 45 Stat. 1223; June 15, 1935, ch. 261, title III, § 301, 49 Stat. 381; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; Sept. 1, 1970, Pub. L. 91–393, § 6, 84 Stat. 835.)

AMENDMENTS

1970—Pub. L. 91–393 inserted "or his designee" following "Attorney General."

1935—Act June 15, 1935 inserted "under said sections or any other Act for the acquisition by the Secretary of Agriculture of areas for wildlife refuges" and "or as refuges for wildlife", and added the clause beginning "as are set out in such deed or lease or, if deemed necessary" etc.

§ 715e–1. Application of section 715e to sections 715d–1 and 715d–2.

CODIFICATION

Section, act June 15, 1935, ch. 261, title III, § 304, 49 Stat. 382, applying section 715e of this title to exchanges effected under former sections 715d–1 and 715d–2, has been omitted due to the repeal of sections 715d–1 and 715d–2 by Pub. L. 89–669, § 8(a), Oct. 15, 1966, 80 Stat. 930.

§ 715f. Same; consent of State to conveyance.

No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State. (Feb. 18, 1929, ch. 257, § 7, 45 Stat. 1223; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 715g. Jurisdiction of State over areas acquired.

The jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations, except so far as the punishment of offenses against the United States is concerned. (Feb. 18, 1929, ch. 257, § 8, 45 Stat. 1224.)

§ 715h. Same; operation of State game laws.

Nothing in sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title is intended to interfere with the operation of the game laws of the several States applying to migratory game birds insofar as they do not permit what is forbidden by Federal law. (Feb. 18, 1929, ch. 257, § 9, 45 Stat. 1224.)

§ 715i. Administration.

(a) Treaty obligations; rules and regulations.

Areas of lands, waters, or interests therein acquired or reserved pursuant to sections 715 to 715d, 715e, 715f to 715k and 715n to 715r of this title shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada, and other species of wildlife found thereon, including species that are listed pursuant to section 1533 of this title as endangered species or threatened species, and to restore or develop adequate wildlife habitat.

(b) Management and public and private agency agreements authorization.

In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies. (Feb. 18, 1929, ch. 257, § 10, 45 Stat. 1224; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Oct. 15, 1966, Pub. L. 89–669, § 7(b), 80 Stat. 929.)

(As amended Dec. 28, 1973, Pub. L. 93–205, § 13(b), 87 Stat. 902.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–205 substituted "listed pursuant to section 1533 of this title as endangered species or threatened species," for "threatened with extinction,".

§ 715j. Migratory birds defined.

For the purposes of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title, migratory

birds are those defined as such by the treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702) and the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311). (Feb. 18, 1929, ch. 257, § 11, 45 Stat. 1224; Oct. 15, 1966, Pub. L. 89–669, § 7(c), 80 Stat. 930.)

AMENDMENTS

1966—Pub. L. 89–669 added credit "(39 Stat. 1702)" and defined migratory birds to include those defined in the Treaty of Feb. 7, 1936 (50 Stat. 1311) with the United Mexican States.

§ 715k. Appropriations for purposes of chapter; disposal; reservation protectors.

For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and development of such areas and other preserves, reservations, or breeding grounds frequented by migratory birds and under the administration of the Secretary of the Interior, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wildlife conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of the provisions of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title, there are hereby authorized to be appropriated, in addition to all other amounts authorized by law to be appropriated, $200,000 for the fiscal year ending June 30, 1940, and for each fiscal year thereafter. No part of any appropriation authorized by this section shall be used for payment of the salary, compensation, or expenses of any United States protector, except reservation protectors for the administration, maintenance and protection of such reservations and the birds thereon: *Provided,* That reservation protectors appointed under the provisions of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title, shall be selected, when practicable, from qualified citizens of the State in which they are to be employed. The Secretary of the Interior is authorized and directed to make such expenditures and to employ such means, including personal services in the District of Columbia and elsewhere, as may be necessary to carry out the foregoing objects. (Feb. 18, 1929, ch. 257, § 12, 45 Stat. 1224; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Oct. 15, 1966, Pub. L. 89–669, § 7(a), 80 Stat. 929.)

AMENDMENTS

1966—Pub. L. 89–669 substituted "grounds frequented by migratory birds" for "grounds frequented by migratory game birds", and "United States protector" for "United States game protector."

§ 715k–1. Expenditures for personal services.

In the execution of this section, and sections 141b, 715d–1 to 715d–3, 715e, 715e–1 and 715s of this title, the Secretary of the Interior is authorized to make such expenditures for personal services in the District of Columbia and elsewhere as he shall deem necessary. (June 15, 1935, ch. 261, title VII, 49 Stat. 384; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 715k–2. Availability of $6,000,000 fund.

CODIFICATION

. Section, acts June 29, 1937, ch. 404, title I, 50 Stat. 421; June 16, 1938, ch. 464, title I, 52 Stat. 736; June 30, 1939, ch. 253, title I, 53 Stat. 965, made an earlier specific appropriation available for maintenance and operation of motor-propelled passenger-carrying vehicles.

§ 715k–3. Appropriations for the preservation of wetlands and other waterfowl habitat.

In order to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of important wetlands and other waterfowl habitat essential to the preservation of such waterfowl, there is authorized to be appropriated for the period beginning on July 1, 1961, and ending at the close of September 30, 1983, not to exceed $200,000,000. (Pub. L. 87—383, § 1, Oct. 4, 1961, 75 Stat. 813; Pub. L. 90–205, § 1(a), Dec. 15, 1967, 81 Stat. 612; Pub. L. 94–215, § 2(a), Feb. 17, 1976, 90 Stat. 189.)

AMENDMENTS

1967—Pub. L. 90–205 substituted "fifteen-year period" for "seven-year period".

§ 715k–4. Same; accounting and use of appropriations.

Funds appropriated each fiscal year pursuant to sections 715k–3 to 715k–5 of this title shall be accounted for, added to, and used for purposes of the migratory bird conservation fund established pursuant to section 718d of this title. (Pub. L. 87–383, § 2, Oct. 4, 1961, 75 Stat. 813.)

§ 715k–5. Same; advance to migratory bird conservation fund; repayments; acquisition of lands.

Funds appropriated pursuant to sections 715k–3 to 715k–5 of this title shall be treated as an advance, without interest, to the migratory bird conservation fund. Such appropriated funds, beginning on October 1, 1983, shall be repaid to the Treasury out of the migratory bird conservation fund, such repayment shall be made in annual amounts comprising 75 per centum of the moneys accruing annually to such fund. In the event the full amount thorized by section 715k–3 of this title is appropriated before October 1, 1983, the repayment of such funds pursuant to this section shall begin with the next full fiscal year. No land shall be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the Governor of the State or appropriate State agency. (Pub. L. 87–383, § 3, Oct. 4, 1961, 75 Stat. 813; Pub. L. 90–205, § 1(b), Dec. 15, 1967, 81 Stat. 612; Pub. L. 94–215, § 2(b), Feb. 17, 1976, 90 Stat. 189.)

AMENDMENTS

1967—Pub. L. 90–205 made minor structural changes and substituted "1977" for "1969" and "fifteen-year period" for "seven-year period".

§§ 715*l*, 715m. Repealed. Pub. L. 89–669, § 7(d), Oct. 15, 1966, 80 Stat. 930.

Sections, act Feb. 18, 1929, ch. 257, §§ 13, 14, 45 Stat. 1225, related to: execution of provisions, powers and duties of United States judges, commissioners and employees of Department of Interior; and penalty for violation of provisions, and are now covered by section 668dd(f) and (e) of this title, respectively.

§ 715n. Word "take" defined.

For the purposes of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title the word "take" shall be construed to mean pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires. (Feb. 18, 1929, ch. 257, § 15, 45 Stat. 1225.)

§ 715*o*. National forest and power sites; use for migratory bird reservations.

Nothing in sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title shall be construed as authorizing or empowering the Migratory Bird Conservation Commission created by section 715a of this title, the Secretary of the Interior, or any other board, commission, or officer, to declare, withdraw, or determine, except heretofore designated, any part of any national forest or power site, a migratory bird reservation under any of the provisions of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title, except by and with the consent of the legislature of the State wherein such forest or power site is located. (Feb. 18, 1929, ch. 257, § 16, 45 Stat. 1225; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.)

§ 715p. Cooperation of State in enforcement of provisions.

When any State shall, by suitable legislation, make provision adequately to enforce the provisions of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715r of this title and all regulations promulgated thereunder, the Secretary of the Interior may so certify, and then and thereafter said State may cooperate with the Secretary of the Interior in the enforcement of such sections and the regulations thereunder. (Feb. 18, 1929, ch. 257, § 17, 45 Stat. 1225; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.)

§ 715q. Expenses of commission; appropriations.

A sum sufficient to pay the necessary expenses of the commission and its members, not to exceed an annual expenditure of $7,500, is authorized to be appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be paid out on the audit and order of the chairman of said commission, which audit and order shall be conclusive and binding upon the General Accounting Office as to the correctness of the accounts of said commission. (Feb. 18, 1929, ch. 257, § 18, 45 Stat. 1225; Oct. 15, 1962, Pub. L. 87–812, 76 Stat. 922.)

AMENDMENTS

1962—Pub. L. 87–812 increased the annual expenditures from not more than $5,000 to not more than $7,500 and corrected a misspelling of the word "commission".

§ 715r. Partial invalidity; validity of remainder.

If any provision of sections 715 to 715d, 715e, 715f to 715k, and 715*l* to 715q of this title or the application thereof to any person or circumstance is held invalid the validity of the remainder of such sections and of the application of such provision to other persons and circumstances shall not be affected thereby. (Feb. 18, 1929, ch. 257, § 19, 45 Stat. 1226.)

§ 715s. Participation of States in revenues from National Wildlife Refuge System.

(a) Separate fund in the United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System".

Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "system") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

(b) Deduction of expenses.

The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing measures set forth in subsection (a) of this section.

(c) Payments to counties.

The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System: *Provided*, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be

proportional to its acreage of such public lands therein; and

(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, exclusive of any improvements to such areas made subsequent to Federal acquisition, such cost to be adjusted to represent current values as determined by the Secretary for the first full fiscal year after enactment of this Act and as redetermined by him at five-year intervals thereafter, or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive.

(d) Limitation on amount; reduction of payments.

The payments under subsection (c) of this section to the counties in the United States for any one fiscal year shall not exceed the amount of net receipts in the fund for that fiscal year and, in case the net receipts are insufficient for a particular fiscal year to pay the aggregate amount of the payments for that fiscal year to the counties, the payment to each county shall be reduced proportionately.

(e) Use and transfer of surplus funds.

Any moneys remaining in the fund after all payments under this section are made for any fiscal year shall be transferred to the Migratory Bird Conservation Fund and shall be available for land acquisition under the provisions of the Migratory Bird Conservation Act; except that the funds available for the management of the National Wildlife Refuge System or for enforcement of the Migratory Bird Treaty Act shall not be diminished by the amendments made to this subsection by the National Wildlife Refuge System Administration Act Amendments of 1974, unless by specific Act of Congress.

(f) Terms, conditions, and regulations for disposition of surplus products, grant of privileges, and execution of other activities resulting in the collection of revenues.

The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States. Further, the Secretary may dispose of such surplus animals by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propagation purposes and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife in accordance with such regulations as he may prescribe.

(g) Supersedure and repeal of other provisions.

Beginning with the first day of the next full fiscal year hereafter, the provisions of this Act shall supersede and repeal the provisions of the paragraph entitled "Management of National Wildlife Refuges" in the General Appropriation Act, 1951, approved September 6, 1950 (64 Stat. 595, 693—694). (June 15, 1935, ch. 261, title IV, § 401, 49 Stat. 383; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Oct. 31, 1951, ch. 654, § 2 (13), 65 Stat. 707; Aug. 30, 1964, Pub. L. 88–523, 78 Stat. 701; Oct. 15, 1966, Pub. L. 89–669, § 8(b), 80 Stat. 930.)

(As amended Dec. 28, 1973, Pub. L. 93–205, § 13(b), 87 Stat. 902; Dec. 3, 1974, Pub. L. 93–509, § 4, 88 Stat. 1603.)

AMENDMENTS

1974—Subsec. (e). Pub. L. 93–509 substituted provisions that moneys remaining in the fund after all payments under this section are made for any fiscal year shall be transferred to the Migratory Bird Conservation Fund and shall be available for land acquisition under the Migratory Bird Conservation Act with exception that the funds available for the management of the National Wildlife Refuge System or for enforcement of the Migratory Bird Treaty Act shall not be diminished for provisions that moneys remaining in the fund after all payments are made for any fiscal year may be used by the Secretary thereafter for management of the System, including but not limited to the construction, improvement, repair, and alteration of buildings, roads, and other facilities, and for enforcement of the Migratory Bird Treaty Act.

1973—Subsec. (a). Pub. L. 93–205 substituted "listed pursuant to section 1533 of this title as endangered species or threatened species," for "threatened with extinction,".

HUNTING STAMP TAX

§ 718. Definitions.

(a) Terms defined in sections 703 to 711 of this title, or sections 715 to 715d, 715e, 715f to 715k, and 715l to 715r of this title, shall, when used in sections 718 to 718b, and 718c to 718h of this title, have the meaning assigned to such terms in such sections, respectively.

(b) As used in sections 718 to 718b, and 718c to 718h of this title (1) the term "migratory waterfowl" means the species enumerated in paragraph (a) of subdivision 1 of article I of the treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702); (2) the term "State" includes the several States and Territories of the United States and the District of Columbia; and (3) the term "take" means pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill. (Mar. 16, 1934, ch. 71, § 9, 48 Stat. 452.)

§ 718a. Hunting stamp for taking migratory waterfowl.

No person who has attained the age of sixteen years shall take any migratory waterfowl unless at the time of such taking he carries on his person an unexpired Federal migratory-bird hunting and conservation stamp validated by his signature written by himself in ink across the face of the stamp prior to his taking such birds; except that no such stamp shall be required for the taking of migratory waterfowl by Federal or State institutions or official agencies, or for propagation, or by the resident owner, tenant, or share cropper of

the property or officially designated agencies of the Department of the Interior for the killing, under such restrictions as the Secretary of the Interior may by regulation prescribe, of such waterfowl when found injuring crops or other property. Any person to whom a stamp has been sold under section 718b of this title shall upon request exhibit such stamp for inspection to any officer or employee of the Department of the Interior authorized to enforce the provisions of sections 718 to 718b, and 718c to 718h of this title or to any officer of any State or any political subdivision thereof authorized to enforce game laws. (Mar. 16, 1934, ch. 71, § 1, 48 Stat. 451; June 15, 1935, ch. 261, title I, § 1, 49 Stat. 378; 1939 Reorg. Plan No. II, § .4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; July 30, 1956, ch. 782, § 1, 70 Stat. 722; Pub. L. 94–215, § 3(a), Feb. 17, 1976, 90 Stat. 189.)

AMENDMENTS

1976—Pub. L. 94–215 added the words "and conservation" following "hunting".

1956—Act July 30, 1956, substituted "no person who has attained the age of sixteen years", for "no person over sixteen years of age".

1935—Act June 15, 1935, substituted "validated by his signature written by himself in ink across the face of the stamp prior to his taking such birds" for "issued to him in the manner hereinafter provided," and eliminated provisions which authorized the Secretary of Agriculture to adopt and promulgate regulations for the protection of private property in the injury of crops.

§ 718b. Issuance and sale of stamps; fees; validity; expiration; redemption; definition of retail dealer.

The stamps required by section 718a of this title shall be issued and sold by the Postal Service and may be sold by the Department of the Interior, pursuant to regulations prescribed jointly by the Postal Service and the Secretary of the Interior, at (1) each post office of the first- and second-class, and (2) any establishment, facility, or location as the Postal Service and the Secretary of the Interior shall direct or authorize. The funds received from the sale of such stamps by the Department of the Interior shall be deposited in the migratory bird conservation fund in accordance with the provisions of section 718d of this title. For each such stamp sold under the provisions of this section there shall be collected by the Postal Service a sum of not less than $3 and not more than $5 as determined by the Secretary of the Interior after taking into consideration, among other matters, the increased cost of lands needed for the conservation of migratory birds. No such stamp shall be valid under any circumstances to authorize the taking of migratory waterfowl except in compliance with Federal and State laws and regulations and then only when the person so taking such waterfowl shall himself have written his signature in ink across the face of the stamp prior to such taking. Each such stamp shall expire and be void after the thirtieth day of June next succeeding its issuance. The Postal Service, pursuant to regulations to be prescribed by it, shall provide for the redemption, on or before the thirtieth day of September of each year, of blocks composed of two or more attached unused stamps issued for such year (A) that were sold on consignment to any person, including, but not limited to, retail dealers for resale to their customers, and (B) that have not been resold by any such person. As used in this section, the term "retail dealers" means persons regularly engaged in the business of retailing hunting or fishing equipment, and persons duly authorized to act as agents of a State or political subdivision thereof for the sale of State or county hunting or fishing licenses. Such stamps shall be usable as migratory-bird hunting stamps only during the fiscal year for which issued. (As amended Dec. 22, 1971, Pub. L. 92–214, §§ 1, 2, 85 Stat. 777; Pub. L. 94–215, § 3(b), (c), Feb. 17, 1976, 90 Stat. 189, Pub. L. 94–273, § 34, Apr. 21, 1976, 90 Stat. 380.)

AMENDMENTS

1976—Pub. L. 94–215 amended the first and fifth sentences generally.

Pub. L. 94–273 deleted the word "fiscal".

1971—Pub. L. 92–214 substituted "Postal Service" for "Post Office Department" and "Postmaster General" and added provisions authorizing the collection of up to $5 for each stamp sold to be determined by the Secretary of the Interior after taking into consideration, among other matters, the increased cost of lands needed for the conservation of migratory birds.

1958—Pub. L. 85–585 increased cost of stamp from $2 to $3.

1956—Act July 30, 1956, made it mandatory for Postmaster General to provide for redemption of unused stamps which are on consignment to retail dealers and are returned at the end of the season in blocks of two or more, added provision defining retail dealers, and added provision allowing use of stamps only during fiscal year for which issued.

1949—Act Aug. 12, 1949, increased cost of stamp from $1 to $2.

1935—Act June 15, 1935, amended section generally.

§ 718b–1. Disposition of unsold stamps; collectors' supply; destruction of surplus.

On or after July 30, 1956, such quantity of migratory-bird hunting stamps, not sold at the end of the year for which issued, as determined by the Postal Service to be (1) required to supply the market for sale to collectors, and (2) in suitable condition for such sale to collectors, shall be turned over to the Philatelic Agency and therein placed on sale. Any surplus stock of such migratory-bird hunting stamps may be destroyed in such manner as the Postal Service shall direct. (As amended Dec. 22, 1971, Pub. L. 92–214, § 3, 85 Stat. 777; Pub. L. 94–273, § 34, Apr. 21, 1976, 90 Stat. 380.)

AMENDMENTS

1976—Pub. L. 94–273 deleted the word "fiscal".

1971—Pub. L. 92–214 substituted "Postal Service" for "Postmaster General".

§ 718c. Compliance with treaty regulations and State game laws.

Nothing in sections 718 to 718b, and 718c to 718h of this title shall be construed to authorize any person to take any migratory waterfowl otherwise than in accordance with regulations adopted and approved pursuant to any treaty heretofore or here-

after entered into between the United States and any other country for the protection of migratory birds, nor to exempt any person from complying with the game laws of the several States. (Mar. 16, 1934, ch. 71, § 3, 48 Stat. 451.)

§ 718d. Disposition of receipts from sale of stamps.

All moneys received for such stamps shall be accounted for by the Postal Service or the Department of the Interior, whichever is appropriate, and paid into the Treasury of the United States, and shall be reserved and set aside as a special fund to be known as the migratory bird conservation fund, to be administered by the Secretary of the Interior. All moneys received into such fund are appropriated for the following objects and shall be available therefor until expended:

(a) Advance allotments to Postal Service.

So much as may be necessary shall be used by the Secretary of the Interior to make advance allotments to the Postal Service at such times and in such amounts as may be mutually agreed upon by the Secretary of the Interior and the Postal Service for direct expenditure by the Postal Service for engraving, printing, issuing, selling, and accounting for migratory bird hunting stamps and moneys received from the sale thereof, in addition to expenses for personal services in the District of Columbia and elsewhere, and such other expenses as may be necessary in executing the duties and functions required of the Postal Service.

(b) Acquisition of bird refuges.

Except as authorized in subsection (c) of this section, the remainder shall be available for the location, ascertainment, and acquisition of suitable areas for migratory bird refuges under the provisions of the Migratory Bird Conservation Act and for the administrative costs incurred in the acquisition of such areas.

(c) Waterfowl Production Areas.

The Secretary of the Interior is authorized to utilize funds made available under subsection (b) of this section for the purposes of such subsection, and such other funds as may be appropriated for the purposes of such subsection, or of this subsection, to acquire, or defray the expense incident to the acquisition by gift, devise, lease, purchase, or exchange of, small wetland and pothole areas, interests therein, and rights-of-way to provide access thereto. Such small areas, to be designated as "Waterfowl Production Areas", may be acquired without regard to the limitations and requirements of the Migratory Bird Conservation Act, but all of the provisions of such Act which govern the administration and protection of lands acquired thereunder, except the inviolate sanctuary provisions of such Act, shall be applicable to areas acquired pursuant to this subsection. (Mar. 16, 1934, ch. 71, § 4, 48 Stat. 451; June 15, 1935, ch. 261, title I, §§ 3, 4, 49 Stat. 379, 380; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433; Aug. 12, 1949, ch. 421, § 2, 63 Stat. 600; Oct. 20, 1951, ch. 520, 65 Stat. 451; Aug. 1, 1958, Pub. L. 85–585, §§ 2, 3, 72 Stat. 486, 487; Oct. 15, 1966, Pub. L. 89–669, § 6, 80 Stat. 929.) (As amended Dec. 22, 1971, Pub. L. 92–214, § 2, 85 Stat. 777; Pub. L. 94–215, § 3(d), Feb. 17, 1976, 90 Stat. 190.)

AMENDMENTS

1976—Pub. L. 94–215 added the words "or the Department of the Interior, whichever is appropriate," after "Postal Service" in the first sentence.

1971—Pub. L. 92–214 substituted "Postal Service" for "Post Office Department" in the introductory provisions and "Postal Service" for "Post Office Department" and "Postmaster General" in subsec. (a).

1966—Subsec. (b). Pub. L. 89–669 struck out provisos relating to wildlife management areas and rule making for such areas which are now covered by section 668bb(d)(1) of this title.

1958—Subsecs. (a), (b). Pub. L. 85–585 earmarked proceeds from sale of stamps, less expenses of Post Office Department in connection with fish and wildlife matters, for the acquisition of migratory bird refuges, and permitted hunting of resident game birds in designated wildlife management areas.

Subsec. (c). Pub. L. 85–585 added subsec. (c).

1951—Subsec. (a). Act Oct. 20, 1951, substituted "85 per centum" for "90 percentum".

Subsec. (b). Act Oct. 20, 1951, inserted "in enforcing" immediately following "The remainder shall be available for expenses".

1949—Subsec. (a). Act Aug. 12, 1949, added proviso.

1935—Act June 15, 1935, amended section generally.

§ 718e. Offenses.

(a) No person to whom has been sold a migratory-bird hunting stamp, validated as provided in section 718a of this title, shall loan or transfer such stamp to any person during the period of its validity; nor shall any person other than the person validating such stamp use it for any purpose during such period.

(b) No person shall alter, mutilate, imitate, or counterfeit any stamp authorized by section 718 to 718b, and 718c to 718h of this title, or imitate or counterfeit any die, plate, or engraving therefor, or make, print, or knowingly use, sell, or have in his possession any such counterfeit, die, plate, or engraving. (Mar. 16, 1934, ch. 71, § 5, 48 Stat. 452; June 15, 1935, ch. 261, title I, § 5, 49 Stat. 380.)

AMENDMENTS

1935—Act June 15, 1935, amended section generally.

§ 718f. Enforcement; authority of United States judges, commissioners, and employees of Department of the Interior.

For the efficient execution of sections 718 to 718b, and 718c to 718h of this title, the judges of the several courts, established under the laws of the United States, United States commissioners, and persons appointed by the Secretary of the Interior to enforce the provisions of said sections, shall have, with respect thereto, like powers and duties as are conferred upon said judges, commissioners, and employees of the Department of the Interior by sections 703 to 711 of this title, or any other Act to carry into effect any treaty for the protection of migratory birds with respect to sections 703 to 711 of this title. Any bird or part thereof taken or possessed contrary to such sections or Acts shall, when seized, be disposed of as provided by sections 703 to 711 of this title, or Acts aforesaid. (Mar. 16, 1934, ch. 71, § 6, 48 Stat. 452; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 718g. Penalties.

Any person who shall violate any provision of sections 718 to 718b, and 718c to 718h of this title, or who shall violate or fail to comply with any regulation made pursuant thereto shall be subject to the penalties provided in section 707 of this title. (Mar. 16, 1934, ch. 71, § 7, 48 Stat. 452.)

§ 718h. Cooperation with States and Territories.

The Secretary of the Interior is authorized to cooperate with the several States and Territories in the enforcement of the provisions of sections 718 to 718b, and 718c to 718h of this title. (Mar. 16, 1934, ch. 71, § 8, 48 Stat. 452; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 718i. Repealed. July 30, 1956, ch. 782, § 3 (c), 70 Stat. 722.

Section, act June 28, 1941, ch. 259, § 1, 55 Stat. 356, related to disposal of surplus stamps and restricted use of stamps to the fiscal year for which issued, and is now covered by sections 718b and 718b–1 of this title.

18. Protection of Wild Horses and Burros

16 U.S.C. 1331–1340

Sec.

§ 1331. Congressional findings and declaration of policy.

Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands. (Pub. L. 92–195, § 1, Dec. 15, 1971, 85 Stat. 649.)

§ 1332. Definitions.

As used in this chapter—

(a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;

(b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros on public lands of the United States;

(c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

(d) "herd" means one or more stallions and his mares; and

(e) "public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service.

(Pub. L. 92–195, § 2, Dec. 15, 1971, 85 Stat. 649.)

§ 1333. Powers and duties of Secretary.

(a) Jurisdiction; management; ranges; ecological balance objectives; scientific recommendations; forage allocation adjustments.

All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this chapter. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 1337 of this title deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 1337 of this title. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance

of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.

(b) Humane destruction of certain animals; removal for private maintenance.

Where an area is found to be overpopulated, the Secretary, after consulting with the Advisory Board, may order old, sick, or lame animals to be destroyed in the most humane manner possible, and he may cause additional excess wild free-roaming horses and burros to be captured and removed for private maintenance under humane conditions and care.

(c) Humane destruction: act of mercy; habitat use; overpopulation.

The Secretary may order wild free-roaming horses or burros to be destroyed in the most humane manner possible when he deems such action to be an act of mercy or when in his judgment such action is necessary to preserve and maintain the habitat in a suitable condition for continued use. No wild free-roaming horse or burro shall be ordered to be destroyed because of over population unless in the judgment of the Secretary such action is the only practical way to remove excess animals from the area.

(d) Customary disposal of remains; sales prohibition.

Nothing in this chapter shall preclude the customary disposal of the remains of a deceased wild free-roaming horse or burro, including those in the authorized possession of private parties, but in no event shall such remains, or any part thereof, be sold for any consideration, directly or indirectly. (Pub. L. 92–195, § 3, Dec. 15, 1971, 85 Stat. 649.)

§ 1334. Private maintenance; numerical approximation; strays on private lands: removal; destruction by agents.

If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshall or agent of the Secretary, who shall arrange to have the animals removed. In no event shall such wild free-roaming horses and burros be destroyed except by the agents of the Secretary. Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands. Any individuals who maintain such wild free-roaming horses or burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained. (Pub. L. 92–195, § 4, Dec. 15, 1971, 85 Stat. 650.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1338 of this title.

§ 1335. Recovery rights.

A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found. (Pub. L. 92–195, § 5, Dec. 15, 1971, 85 Stat. 650.)

§ 1336. Cooperative agreements; regulations.

The Secretary is authorized to enter into cooperative agreements with other landowners and with the State and local governmental agencies and may issue such regulations as he deems necessary for the furtherance of the purposes of this chapter. (Pub. L. 92–195, § 6, Dec. 15, 1971, 85 Stat. 650.)

§ 1337. Joint advisory board; appointment; membership; functions; qualifications; reimbursement limitation.

The Secretary of the Interior and the Secretary of Agriculture are authorized and directed to appoint a joint advisory board of not more than nine members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection. They shall select as advisers persons who are not employees of the Federal or State Governments and whom they deem to have special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management. Members of the board shall not receive reimbursement except for travel and other expenditures necessary in connection with their services. (Pub. L. 92–195, § 7, Dec. 15, 1971, 85 Stat. 650.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1333 of this title.

§ 1338. Criminal provisions.

(a) Violations; penalties; trial.

Any person who—

(1) willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary, or

(2) converts a wild free-roaming horse or burro to private use, without authority from the Secretary, or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(5) sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 1334 of this title, or the remains thereof, or

(6) willfully violates a regulation issued pursuant to this chapter,

shall be subject to a fine of not more than $2,000, or imprisonment for not more than one year, or both. Any person so charged with such violation by the Secretary may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, Title 18.

(b) Arrest; appearance for examination or trial; warrants: issuance and execution.

Any employee designated by the Secretary of the Interior or the Secretary of Agriculture shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this chapter or any regulation made pur-

suant thereto, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction, and shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this chapter or regulations made pursuant thereto. Any judge of a court established under the laws of the United States, or any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. (Pub. L. 92–195, § 8, Dec. 15, 1971, 85 Stat. 650.)

§ 1338a. Transportation of captured animals; procedures and prohibitions applicable.

In administering this chapter, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of 47(a) of title 18 shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary. (Added Pub. L. 94–579, § 404, Oct. 21, 1976, 90 Stat. 2775.)

§ 1339. Limitation of authority.

Nothing in this chapter shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist. (Pub. L. 92–195, § 9, Dec. 15, 1971, 85 Stat. 651.)

§ 1340. Joint report to Congress; consultation and coordination of implementation, enforcement, and departmental activities; studies.

After the expiration of thirty calendar months following December 15, 1971, and every twenty-four calendar months thereafter, the Secretaries of the Interior and Agriculture will submit to Congress a joint report on the administration of this chapter, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as he might deem appropriate.

The Secretary of the Interior and the Secretary of Agriculture shall consult with respect to the implementation and enforcement of this chapter and to the maximum feasible extent coordinate the activities of their respective departments and in the implementation and enforcement of this chapter. The Secretaries are authorized and directed to undertake those studies of the habits of wild free-roaming horses and burros that they may deem necessary in order to carry out the provisions of this chapter. (Pub. L. 92–195, § 10, Dec. 15, 1971, 85 Stat. 651.)

19. Responsibilities of Secretary of Agriculture; Transfer to Secretary of Agriculture of Regulation of Domestic Furbearing Animals

7 U.S.C. 433, 434

§ 433. Domestic raising of fur-bearing animals; classification.

For the purposes of all classification and administration of Acts of Congress, Executive orders, administrative orders, and regulations pertaining to—

(a) fox, rabbit, mink, chinchilla, marten, fisher, muskrat, karakul and all other fur-bearing animals, raised in captivity for breeding or other useful purposes shall be deemed domestic animals;

(b) such animals and the products thereof shall be deemed agricultural products; and

(c) the breeding, raising, producing, or marketing of such animals or their products by the producer shall be deemed an agricultural pursuit.

(Apr. 30, 1946, ch. 242, § 1, 60 Stat. 127.)

§ 434. Same; transfer of functions, appropriations, records and property to Secretary of Agriculture.

(a) All the functions of the Secretary of the Interior and the Fish and Wildlife Service of the Department of the Interior, which affect the breeding, raising, producing, marketing, or any other phase of the production or distribution, of domestically raised fur-bearing animals, or products thereof, are transferred to and vested in the Secretary of Agriculture.

(b) Appropriations and unexpended balances of appropriations, or parts thereof, which the Director of the Budget determines to be available for expenditure for the administration of any function transferred by this section and section 433 of this title, shall be available for expenditure for the continued administration of such function by the officer to whom such function is so transferred.

(c) All records and property (including office furniture and equipment) under the jurisdiction of the Secretary of the Interior and the Fish and Wildlife Service of the Department of the Interior used primarily in connection with the administration of functions transferred by said sections are transferred to the jurisdiction of the Secretary of Agriculture. (Apr. 30, 1946, c. 242, § 2, 60 Stat. 127.)

20. Studies of Wildlife in National Forests

16 U.S.C. 581d

§ 581d. Life histories and habits of forest animals, birds, and wildlife; appropriation for experiments and investigations.

For such experiments and investigations as may be necessary in determining the life histories and habits of forest animals, birds, and wildlife, whether injurious to forest growth or of value as supplemental resource, and in developing the best and most effective methods for their management and control at forest experiment stations, or elsewhere, there is authorized to be appropriated annually, out of any money in the Treasury not otherwise appropriated, not more than $150,000. (May 22, 1928, ch. 678, § 5, 45 Stat. 701.)

21. Surplus Grain for Wildlife

7 U.S.C. 447–449

§ 447. Requisition of surplus grain; prevention of starvation of resident game birds and other resident wildlife; utilization by State agencies; reimbursement for packaging and transporting.

For the purpose of meeting emergency situations caused by adverse weather conditions or other factors destructive of important wildlife resources, the States are authorized, upon the request of the State fish and game authority or other State agency having similar authority and a finding by the Secretary of the Interior that any area of the United States is threatened with serious damage or loss to resident game birds and other resident wildlife from starvation, to requisition from the Commodity Credit Corporation grain acquired by the Corporation through price support operations. Such grain may thereafter be furnished to the particular State for direct and sole utilization by the appropriate State agencies for purposes of sections 447 to 449 of this title in such quantities as mutually agreed upon by the State and the Commodity Credit Corporation and subject to such regulations as may be considered desirable by the Corporation. The Corporation shall be reimbursed by the particular State in each instance for the expense of the Corporation in packaging and transporting such grain for purposes of sections 447 to 449 of this title. (Pub. L. 87–152, § 1, Aug. 17, 1961, 75 Stat. 389.)

§ 448. Same; prevention of starvation of migratory birds; reimbursement for packaging and transporting.

Upon a finding by the Secretary of the Interior that migratory birds are threatened with starvation in any area of the United States, the Secretary is authorized to requisition from the Commodity Credit Corporation grain acquired by that Corporation through price support operations in such quantities as may be mutually agreed upon. The Corporation shall be reimbursed by the Secretary for its expense in packaging and transporting of such grain for purposes of sections 447 to 449 of this title. (Pub. L. 87–152, § 2, Aug. 17, 1961, 75 Stat. 389.)

§ 449. Same; authorization of appropriations.

There are authorized to be appropriated such sums as may be necessary to reimburse the Commodity Credit Corporation for its investment in grain transferred pursuant to sections 447 to 449 of this title. (Pub. L. 87–152, § 3, Aug. 17, 1961, 75 Stat. 389.)

22. Tinicum National Environmental Center

P.L. 92–326 (86 Stat. 391), as amended by P.L. 94–548 (90 Stat. 2528)

AN ACT

To provide for the establishment of the Tinicum National Environmental Center in the Commonwealth of Pennsylvania, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the preservation from imminent destruction, the last remaining true tidal marshland in the Commonwealth of Pennsylvania, with its highly significant ecological features, including prime habitat for many species of wildlife, and a feeding and resting place for migratory wildfowl, the Secretary of the Interior is authorized and directed to establish the Tinicum National Environmental Center and administer same as a unit of the National Wildlife Refuge System in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended (80 Stat. 927; 16 U.S.C. 668dd–668ee).

SEC. 2. In fulfillment of the purposes of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall acquire by donation, purchase with donated or appropriated funds, by exchange of federally owned lands in the vicinity, or otherwise, such lands or interests therein, or other property in the counties of Delaware and Philadelphia, Commonwealth of Pennsylvania, as

he may deem necessary for the purpose of preserving, restoring, and developing the natural area known as Tinicum Marsh. The area to be acquired for the foregoing purposes shall not exceed 1,200 acres: *Provided, however,* That said limitation shall not preclude such boundary adjustments as may be deemed necessary for effective administration of the Tinicum National Environmental Center. Lands or interests therein, title to which is held by the Commonwealth of Pennsylvania or a political subdivision thereof, may be acquired only by donation. A description by metes and bounds of the proposed Tinicum National Environmental Center shall be published in the Federal Register, and a scale drawing thereof shall be available in the Office of the Secretary, and such other place or places in the immediate vicinity of the proposed center as will afford all interested parties easy access to information respecting the proposed center.

The area to be acquired will be generally bounded on the west by Wanamaker Avenue, on the south by Interstate Highway I–95, on the east by the easterly edge of the Tinicum Wildlife Preserve and the lands owned by the United States Department of the Interior and the United States Army Corps of Engineers, and on the north by the developed areas and parklands of Darby Township, Folcroft, Norwood, Prospect Park Boroughs, and the Delaware County incinerator numbered 2.

SEC. 3. The Secretary shall construct, administer, and maintain at an appropriate site within the Tinicum National Environmental Center hereby authorized a wildlife interpretative center for the purpose of promoting environmental education, and to afford visitors an opportunity for the study of wildlife in its natural habitat.

SEC. 4. Notwithstanding any other provision of law, any Federal property located within any of the areas described under the provisions of the second section of this Act may, with the concurrence of the head of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the purposes of the Act.

SEC. 5. The Secretary of the Interior may enter into cooperative agreements with the Commonwealth of Pennsylvania, political subdivisions thereof, corporations, associations, or individuals to carry out the provisions of the Act.

SEC. 6. (a) Each party with whom a cooperative agreement is entered into under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of any funds received under the cooperative agreement, the total cost of any project or undertaking in connection with the cooperative agreement entered into, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the party to the cooperative agreement that are pertinent to the cooperative agreements entered into under this Act.

SEC. 7. (a) There are authorized to be appropriated $2,250,000 to carry out the provisions of this Act.

(b) Beginning with fiscal year 1978, there are authorized to be appropriated, in addition to the authorization appropriated under subsection (a), $1,600,000 to carry out the purposes of this Act.

Approved June 30, 1972, amended Oct. 18, 1976.

23. Tule Elk Population in California

P.L. 94–389 (90 Stat. 1189)

JOINT RESOLUTION

Providing for Federal participation in preserving the Tule elk population in California.

Whereas, although Tule elk once roamed the central valleys of California in vast numbers, the species became nearly extinct during the latter part of the last century as a result of its native habitat being developed for agricultural purposes and urban growth; and

Whereas, although around 1870 the Tule elk population reached a low of approximately thirty animals, through the dedicated efforts of various citizen groups and individual cattlemen, the population has slowly recovered to a total of approximately six hundred animals, the majority of which may be found in free-roaming herds in the Owens Valley, at Cache Creek in Colusa County, California, a small number which are captive in the Tupman Refuge in Vern County, California; and

Whereas in 1971 the California Legislature, recognizing the threat to the Tule elk as a species, amended section 332 and enacted section 3951 of the Fish and Game Code which provide for the encouragement of a statewide population of Tule elk of not less than two thousand, if suitable areas can be found in California to accommodate such population in a healthy environment, and further fixed the population of the Tule elk in the Owens Valley at four hundred and ninety animals, or such greater number as might thereafter be determined by the California Department of Fish and Game, in accordance with game management principles, to be the Owens Valley holding capacity; and

Whereas the Tule elk is considered by the Department of the Interior to be a rare, though not endangered, species by reason of the steps taken by the State of California; and

Whereas the protection and maintenance of California's Tule elk in a free and wild state is of educational, scientific, and esthetic value to the people of the United States; and

Whereas there are Federal lands in the State of California (including, but not limited to, the San Luis National Wildlife Refuge, the Point Reyes National Seashore, various national for-

ests and national parks, and Bureau of Land Management lands located in central California, as well as lands under the jurisdiction of the Secretary of Defense such as Camp Pendleton, Camp Roberts, and Camp Hunter Liggett) which, together with adjacent lands in public and private ownership, offer a potential for increasing the Tule elk population in California to the two thousand level envisioned by the California Legislature: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that the restoration and conservation of a Tule elk population in California of at least two thousand, except that the number of Tule elk in the Owens River Watershed area shall at no time exceed four hundred and ninety or such greater number which is determined by the State of California to be the maximum holding capacity of such area, is an appropriate national goal.

SEC. 2. The Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense shall cooperate with the State of California in making the lands under their respective jurisdictions reasonably available for the preservation and grazing of Tule elk in such manner and to such extent as may be consistent with Federal law.

SEC. 3. The Secretary of the Interior shall submit, on or before the first of March of each year, a report to the Congress as to the estimated size and condition of the various Tule elk herds in California and the nature and condition of their respective habitats. The Secretary shall include in such report his determination as to whether or not the preservation of the Tule elk herd at its then-existing level is, or may be endangered or threatened by actual or proposed changes in land use or land management practices on lands owned by any Federal, State, or local agency, together with his recommendations as to what Federal actions, if any, should be taken in order to preserve the Tule elk herds at the then-existing level or such other level as may be determined from time to time by the State of California.

SEC. 4. The Secretary of the Interior, in coordination with all Federal, State, and other officers having jurisdiction over lands on which Tule elk herds are located or lands which would provide suitable Tule elk habitat, shall develop a plan for Tule elk restoration and conservation, including habitat management, which shall be integrated with the comparable plans of State and local authorities in California. The Secretary's annual report to Congress shall describe the development and implementation of such plan.

Approved August 14, 1976.

24. Waterfowl Depredations Prevention

7 U.S.C. 442–446

§ 442. Availability of grain to prevent waterfowl depredations; payment of packaging, transporting, handling, and other charges.

For the purpose of preventing crop damage by migratory waterfowl, the Commodity Credit Corporation shall make available to the Secretary of the Interior such wheat, corn, or other grains, acquired through price support operations and certified by the Commodity Credit Corporation to be available for purposes of sections 442 to 446 of this title or in such condition through spoilage or deterioration as not to be desirable for human consumption, as the Secretary of the Interior shall requisition pursuant to section 443 of this title. With respect to any grain thus made available, the Commodity Credit Corporation may pay packaging, transporting, handling, and other charges up to the time of delivery to one or more designated locations in each State. (July 3, 1956, ch. 512, § 1, 70 Stat. 492.)

§ 443. Same; requisition of grain upon finding of threat to farmers' crops.

Upon a finding by the Secretary of the Interior that any area in the United States is threatened with damage to farmers' crops by migratory waterfowl, whether or not during the open season for such migratory waterfowl, the Secretary of the Interior is authorized and directed to requisition from the Commodity Credit Corporation and to make available to Federal, State, or local governmental bodies or officials, or to private organizations or persons, such grain acquired by the Commodity Credit Corporation through price-support operations in such quantities and subject to such regulations as the Secretary determines will most effectively lure migratory waterfowl away from crop depredations and at the same time not expose such migratory waterfowl to shooting over areas to which the waterfowl have been lured by such feeding programs (July 3, 1956, ch. 512, § 2, 70 Stat. 492.)

§ 444. Same; reimbursement of packaging and transporting expenses.

With respect to all grain made available pursuant to section 443 of this title, the Commodity Credit Corporation shall be reimbursed by the Secretary of the Interior for its expenses in packaging and transporting such grain for purposes of sections 442 to 446 of this title. (July 3, 1956, ch. 512, § 3, 70 Stat. 492.)

§ 445. Same; authorization of appropriations.

There are authorized to be appropriated such sums as may be necessary to reimburse the Commodity Credit Corporation for its investment in the grain transferred pursuant to sections 442 to 446 of this title. (July 3, 1956, ch. 512, § 4, 70 Stat. 492.)

§ 446. Repealed. Pub. L. 86–133, Aug. 4, 1959, 73 Stat. 279.

Section, act July 3 1956, ch. 512, § 5, 70 Stat. 492, prescribed three years following July 3, 1956, as the expiration date for the availability of grain under sections 442—446 of this title

25. Wildlife Conservation at Water Resource Projects of the Secretary of the Army

33 U.S.C. 540

§ 540. Investigations and improvements; control by Department of the Army; wildlife conservation.

Federal investigations and improvements of rivers, harbors, and other waterways shall be under the jurisdiction of and shall be prosecuted by the Department of the Army under the direction of the Secretary of the Army and the supervision of the Chief of Engineers, except as otherwise specifically provided by Act of Congress, which said investigations and improvements shall include a due regard for wildlife conservation. (June 20, 1938, ch. 535, § 1, 52 Stat. 802.)

26. Wildlife Restoration Projects

16 U.S.C. 669–669i

Sec.

§ 669. Cooperation of Secretary of the Interior with States; conditions.

The Secretary of the Interior is authorized to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter in this chapter set forth; but no money apportioned under this chapter to any State shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of wildlife, shall have assented to the provision of this chapter and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after September 2, 1937, the assent of the Governor of the State shall be sufficient. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of said sections, shall agree upon the wildlife-restoration projects to be aided in such State under the terms of this chapter and all projects shall conform to the standards fixed by the Secretary of the Interior. (Sept. 2, 1937, ch. 899, § 1, 50 Stat. 917; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1939, 4 F. R. 2731, 53 Stat. 1433.)

§ 669a. Definitions.

For the purposes of this chapter the term "wildlife-restoration project" shall be construed to mean and include the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about such projects; the term "State fish and game department" shall be construed to mean and include any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department. (Sept. 2, 1937, ch. 899, § 2, 50 Stat. 917; July 2, 1956, ch. 489, § 1, 70 Stat. 473; July 12, 1960, Pub. L. 86–624, § 10, 74 Stat. 412.)

AMENDMENTS

1960—Pub. L. 86–624 eliminated provisions which defined the term "State" as including the several States and the Territory of Hawaii.

1956—Act July 2, 1956, included the definition of "State".

§ 669b. Appropriations; disposition of unexpended funds.

An amount equal to all revenues accruing each fiscal year (beginning with the fiscal year 1975) from any tax imposed on specified articles by sections 4161 (b) and 4181 of the Internal Revenue Code of 1954, shall, subject to the exemptions in section 4182 of such Code, be covered into the Federal aid to wildlife restoration fund in the Treasury (hereinafter referred to as the "fund") and is authorized to be appropriated and made available until expended to carry out the purposes of this chapter. (As amended Oct. 25, 1972, Pub. L. 92–558, title I, § 101(a), 86 Stat. 1172.)

AMENDMENTS

1972—Pub. L. 92–558 substituted "(beginning with the

fiscal year 1975)" for "(beginning with the fiscal year 1971)" and added reference to section 4161(b) of the Internal Revenue Code of 1954.

1970—Pub. L. 91–503 added provisions for the deposit of the 10 per cent tax on pistols and revolvers under section 4181 of Title 26 into the Federal aid to wildlife restoration fund beginning in fiscal year 1971.

§ 669b–1. Appropriation of accumulated unappropriated receipts.

There is hereby authorized to be appropriated, out of the Federal aid to wildlife restoration fund established by this chapter, for the 1956 fiscal year and for each fiscal year thereafter, an amount equal to 20 per centum of the accumulated unappropriated receipts in such fund on August 12, 1955, until the accumulated unappropriated receipts in such fund on such date have been appropriated and expended. Funds appropriated under the authority of this section shall be made available to the States in accordance with the provisions of, and under the apportionment formula set forth in, this chapter, and shall be in addition to the funds appropriated under section 669b of this title. (Aug. 12, 1955, ch. 861, § 1, 69 Stat. 698.)

§ 669c. Apportionment of funds; expenses of Secretary.

(a) So much, not to exceed 8 per centum, of the revenues covered into said fund in each fiscal year as the Secretary of the Interior may estimate to be necessary for his expenses in the administration and execution of this chapter and the Migratory Bird Conservation Act shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year, and within sixty days after the close of such fiscal year the Secretary of the Interior shall apportion such part thereof as remains unexpended by him, if any, and make certificate thereof to the Secretary of the Treasury and to the State fish and game departments on the same basis and in the same manner as is provided as to other amounts authorized by this chapter to be apportioned among the States for such current fiscal year. The Secretary of the Interior, after making the aforesaid deduction, shall apportion, except as provided in subsection (b) of this section, the remainder of the revenue in said fund for each fiscal year among the several States in the following manner: One-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the total number of paid hunting-license holders of all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned. The term fiscal year as used in this chapter shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of paid hunting-license holders shall be a State's fiscal or license year.

(b) One-half of the revenues accruing to the fund under this chapter each fiscal year (beginning with the fiscal year 1975) from any tax imposed on pistols, revolvers, bows, and arrows shall be apportioned among the States in proportion to the ratio that the population of each State bears to the population of all the States: *Provided*, That each State shall be apportioned not more than 3 per centum and not less than 1 per centum of such revenues. For the purpose of this subsection, population shall be determined on the basis of the latest decennial census for which figures are available, as certified by the Secretary of Commerce. (As amended Oct. 25, 1972, Pub. L. 92–558, title I, § 101(b), 86 Stat. 1172; Pub. L. 94–273, § 4(1), Apr. 21, 1976, 90 Stat. 377.)

AMENDMENTS

1976—Pub. L. 94–273 substituted "October" and "September" for "July" and "June", respectively.

1972—Subsec. (b). Pub. L. 92–558 substituted "(beginning with the fiscal year 1975)" for "(beginning with the fiscal year 1971)" and "pistols, revolvers, bows, and arrows" for "pistols and revolvers".

1970—Pub. L. 91–503 designated existing provisions as subsec. (a) and in subsec. (a) as so designated, substituted "second fiscal year preceding" for "preceding fiscal year" in the provision dealing with the apportionment by the Secretary of the Interior, defined the term "fiscal year", and eliminated provisions dealing with the maximum and minimum apportionments "to all the States", and added subsec. (b).

1946—Act July 24, 1946, substituted proviso making apportionment upon a percentage basis for provisos providing for certain definite sums to be apportioned to each State.

§ 669d. Same; certification to States and Secretary of Treasury; acceptance by States; disposition of funds not accepted.

For each fiscal year, the Secretary of the Interior shall certify to the Secretary of the Treasury and to each State fish and game department the sum which he has estimated to be deducted for administering and executing this chapter and the Migratory Bird Conservation Act and the sum which he has apportioned to each State. Any State desiring to avail itself of the benefits of this chapter shall notify the Secretary of the Interior to this effect within sixty days after it has received the certification referred to in this section. The sum apportioned to any State which fails to notify the Secretary of the Interior as herein provided is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act. (Sept. 2, 1937, ch. 889, § 5, 50 Stat. 918; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Oct. 23, 1970, Pub. L. 91–503, title I, § 102, 84 Stat. 1098.)

AMENDMENTS

1970—Pub. L. 91–503 eliminated existing requirement that apportionments be made by February 20 of each year preceding the commencement of the fiscal year in which the funds would be used.

§ 669e. Submission and approval of plans and projects.

(a) Setting aside funds.

Any State desiring to avail itself of the benefits of this chapter shall, by its State fish and game department, submit programs or projects for wildlife restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this chapter from funds apportioned under this chapter upon his approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this chapter by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any wildlife-restoration project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the Interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said fund as represents the share of the United States payable under this chapter on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive wildlife plans or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this chapter. No payment of any money apportioned under this chapter shall be made on any comprehensive wildlife plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) Definition.

If the State elects to avail itself of the benefits of this chapter by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purposes of this chapter as a wildlife program, all other definitions notwithstanding.

(c) Costs.

Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State agency having primary jurisdiction over the wildlife resources of the State which may be charged against programs or projects supported by the fund established by section 669b of this title shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State. (Sept. 2, 1937, ch. 899, § 6, 50 Stat. 918; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Oct. 23, 1970, Pub. L. 91–503, title I, § 102, 84 Stat. 1099.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–503 added an alternative method of application for funds by the submission of a comprehensive fish and wildlife resource management plan for a period of five years based on projections for fifteen years, to be updated every three years, laid down a maximum limit of federal assistance of 75 percent of the estimated cost of the implementation of the plan, and, in the existing method of application, now contained in par. (2), eliminated reference to Secretary of Treasury and the requirement that the State pay 10 percent of the costs.

Subsecs. (b), (c). Pub. L. 91–503 added subsecs. (b) and (c).

§ 669f. Payment of funds to States; laws governing construction and labor.

(a) When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to wildlife, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this chapter by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 669e of this title, and this plan has been approved by the Secretary of the Interior, then the Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with rules and regulations made pursuant to this chapter. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this chapter. Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of the Interior against the said fund to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State. (Sept 2, 1937, ch. 899, § 7, 50 Stat. 919; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Oct. 23, 1970, Pub. L. 91–503, title I, § 102, 84 Stat. 1100.)

AMENDMENTS

1970—Pub. L. 91–503 divided existing provisions into subsecs. (a) and (b), permitted advance payments to the States for work which has been adequately defined in a comprehensive fish and wildlife plan, and eliminated reference to progress payments in provision covering joint determination of time and amounts of payments.

§ 669g. Maintenance of projects; expenditures for management of wildlife areas and resources.

(a) Maintenance of wildlife-restoration projects established under the provisions of this chapter shall be the duty of the States in accordance with their respective laws. Beginning July 1, 1945, the term "wildlife-restoration project", as defined in section 669a of this title, shall include maintenance of completed projects. Notwithstanding any other provisions of this chapter, funds apportioned to a State under this chapter may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources.

(b) Each State may use the funds apportioned to it under section 669c(b) of this title to pay up to 75 per centum of the costs of a hunter safety program and the construction, operation, and maintenance of public target ranges, as a part of such program. The non-Federal share of such costs may be derived from license fees paid by hunters, but not from other Federal grant programs. The Secretary shall issue not later than the 120th day after the effective date of this subsection such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection. (As amended Oct. 25, 1972, Pub. L. 92–558, title I, § 102(a), 86 Stat. 1173.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–558 substituted "public target ranges" for "public outdoor target ranges" in two places.

1970—Pub. L. 91–503 designated existing provisions as subsec. (a) and, in subsec. (a) so designated, eliminated the 25 percent limitation on the use of federal funds for wildlife restoration projects and the 30 percent limitation on the use of federal funds for the management of wild life areas and resources, and added subsec. (b).

1955—Act Aug. 12, 1955, permitted expenditure of funds for management of wildlife areas and resource.

1946—Act July 24, 1946, added proviso defining "wildlife-restoration project".

§ 669g–1. Payment of funds to and cooperation with Puerto Rico, Guam, and the Virgin Islands.

The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Governor of Guam, and the Governor of the Virgin Islands, in the conduct of wildlife-restoration projects, as defined in section 669a of this title, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, Guam, and the Virgin Islands, out of the money available for apportionment under this chapter, such sums as he shall determine, not exceeding for Puerto Rico one-half of 1 per centum, for Guam one-sixth of 1 per centum, and for the Virgin Islands one-sixth of 1 per centum of the total amount apportioned, in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be available for expenditure in Puerto Rico, Guam, or the Virgin Islands, as the case may be, in the succeeding year, on any approved project, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act. (Sept. 2, 1937, ch. 899, § 8(a), as added Aug. 18, 1941, ch. 367, 55 Stat. 632, and amended Aug. 3, 1950, ch. 523, 64 Stat. 399; July 2, 1956, ch. 489, § 2, 70 Stat. 473; Aug. 1, 1956, ch. 852, § 7, 70 Stat. 908; June 25, 1959, Pub. L. 86–70, § 15, 73 Stat. 143; Oct. 23, 1970, Pub. L. 91–503, title I, § 102, 84 Stat. 1101.)

AMENDMENTS

1970—Pub. L. 91–503 substituted "Secretary of Agriculture of Puerto Rico" for "Commissioner of Agriculture and Commerce of Puerto Rico" and substituted maximum limits of apportionment of one half of one percent to Puerto Rico, one sixth of one percent each to the Virgin Islands and Guam, for maximum limit of apportionment of $10,000 for the three governments together.

1959—Pub. L. 86–70 eliminated provisions which authorized cooperation with the Alaska Game Commission and permitted apportionment of not more than $75,000 in any one year to the Territory of Alaska.

1956—Act Aug. 1, 1956, inserted the Governor of Guam" following "Commissioner of Agriculture and Commerce of Puerto Rico," and "Guam" following "Puerto Rico" where they appeared in the three remaining places.

Act July 2, 1956, eliminated provisions which authorized the Secretary to cooperate with the Division of Game and Fish of the Board of Commissioners of Agriculture and Forestry of Hawaii, removed the limitation of $25,000 on the amount of funds which could be apportioned to Hawaii in any one year, and substituted "Territory of Alaska" for "Territories" in two instances.

1950—Act Aug. 3, 1950, increased the funds allocated annually to Alaska and Hawaii from $25,000 to $10,000, respectively, to $75,000 and $25,000.

§ 669h. Employment of personnel; equipment, etc.

Out of the deductions set aside for administering and executing this chapter and the Migratory Bird Conservation Act, the Secretary of the Interior is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service; to rent or construct buildings outside of the city of Washington; to purchase such supplies, materials, equipment, office fixtures, and apparatus; and to incur such travel and other expenses, including purchase, maintenance, and hire of passenger-carrying motor vehicles, as he may deem necessary for carrying out the purposes of this chapter. (Sept. 2, 1937, ch. 899, § 9, 50 Stat. 919; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.)

§ 669i. Rules and regulations.

The Secretary of the Interior is authorized to make rules and regulations for carrying out the provisions of this chapter. (Sept. 2, 1937, ch. 899, § 10, 50 Stat. 919; 1939 Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.)

TITLE XIV—INTERSTATE COMPACTS

1. Atlantic States Marine Fisheries Compact

P.L. 77–539 and P.L. 81–721

AN ACT

Granting the consent and approval of Congress to an interstate compact relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Atlantic seaboard and creating the Atlantic States Marine Fisheries Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent and approval of Congress is hereby given to an interstate compact (which shall be operative for not more than fifteen years from the date of the enactment of this Act) relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Atlantic seaboard and creating the Atlantic States Marine Fisheries Commission, negotiated and entered into or to be entered into under the authority of Public Resolution Numbered 79, Seventy-sixth Congress, approved June 8, 1940, and now ratified by the States of Maine, New Hampshire, Masachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, and Virginia, which compact reads as follows:

"The contracting states solemnly agree:

"ARTICLE I

"The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

"ARTICLE II

"This agreement shall become operative immediately as to those states executing it whenever any two or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

"ARTICLE III

"Each state joining herein shall appoint three representatives to a Commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by the Commission or Committee on Interstate Cooperation of such state, or if there be none, or if said Commission on Interstate Cooperation cannot constitutionally designate the said member, such legislator shall be designated by the governor thereof; provided, that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed by the governor of said state in his discretion. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem, to be appointed by the governor. The Commission shall be a body corporate with the powers and duties set forth herein.

"ARTICLE IV

"The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

"To that end the Commission shall draft and, after consultation with the Advisory Committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this

compact.

"The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

"The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

"ARTICLE V

"The Commission shall elect from its number a Chairman and a Vice Chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

"ARTICLE VI

"No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

"ARTICLE VII

"The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission, cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

"An Advisory Committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

"ARTICLE VIII

"When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

"ARTICLE IX

"Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

"ARTICLE X

"Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

"ARTICLE XI

"The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

"The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

"SCHEDULE OF INITIAL STATE CONTRIBUTIONS

"Maine	$700
New Hampshire	200
Massachusetts	2,300
Rhode Island	300
Connecticut	400
New York	1,300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1,300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1,500

"ARTICLE XII

"This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto."

SEC. 2. Without further submission of said compact, the consent and approval of Congress is hereby given to the States of Connecticut, North Carolina, South Carolina, Georgia, and Florida, and for the purpose of the better utilization of their anadromous fisheries, to the States of Vermont and Pennsylvania, to enter into said compact as signatory

States and as parties thereto, in addition to the States which have now ratified the compact.

SEC. 3. The Atlantic States Marine Fisheries Commission constituted by the compact shall make an annual report to Congress not later than sixty days after the beginning of each regular session thereof. Such report shall set forth the activities of the Commission during the calendar year ending immediately prior to the beginning of such session.

SEC. 4. The right to alter, amend, or repeal the provisions of sections 1, 2 and 3 is hereby expressly reserved.

Approved, May 4, 1942.

P.L. 81–721, Act of August 19, 1950, Ch. 763, 64 Stat. 467

AN ACT

Granting the consent and approval of Congress to an amendment to the Atlantic States Marine Fisheries Compact, and repealing the limitation on the life of such compact.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent and approval of Congress is hereby given to an amendment to the Atlantic States Marine Fisheries Compact, as consented to in Public Law 539, Seventy-seventh Congress (56 Stat. 267), which amendment has now been ratified by the States of Maine, New Hampshire, Massachusetts, Rhode Island, Pennsylvania, and North Carolina and reads substantially as follows:

"AMENDMENT NUMBER 1

"The States consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating States with respect to specific fisheries in which such States have a common interest. The representatives of such States on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted provided that the States so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the States participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine Fisheries Commission under the general compact."

SEC. 2. Without further submission of such amendment to the Atlantic States Marine Fisheries Compact, the consent and approval of Congress is hereby given to the States of Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida, now parties to the Atlantic States Marine Fisheries Compact, and to the State of Vermont when it shall enter such compact for the purpose of the better utilization of its anadromous fisheries, to enter into such amendment as signatory States and as parties thereto, in addition to the States which have now ratified the amendment.

SEC. 3. The first section of Public Law 539 of the Seventy-seventh Congress (56 Stat. 267) is hereby amended by striking out "(which shall be operative for not more than fifteen years from the date of the enactment of this Act)": *Provided,* That nothing in this compact shall be construed to limit or add to the powers or the proprietary interest of any signatory State or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State imposing additional conditions and restrictions to conserve its fisheries.

SEC. 4. The right to alter, amend, or repeal the provisions of this Act is hereby expressly reserved.

Approved August 19, 1950.

2. Great Lakes Basin Compact

P.L. 90–419

P.L. 90–419, Act of July 24, 1968, 82 Stat. 414

AN ACT

Granting the consent of Congress to a Great Lakes Basin Compact, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given, to the extent and subject to the conditions hereinafter set forth, to the Great Lakes Basin Compact which has been entered into by the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin in the form as follows:

"GREAT LAKES BASIN COMPACT

"The party states solemnly agree:

"ARTICLE I

"The purposes of this compact are, through means of joint or cooperative action:

"1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).

"2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.

"3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.

"4. To advise in securing and maintaining a proper balance among industrial, commercial, agri-

cultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.

"5 To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

"ARTICLE VI

"The Commission shall have power to:

"A. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.

"B. Recommend methods for the orderly, efficient and balanced development, use and conservation of the water resources of the Basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.

"C. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.

"D. Consider means of improving navigation and port facilities in the Basin or any portion thereof.

"E. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.

"F. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.

"G. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies or inter-governmental bodies having interests in or jurisdiction sufficient to affect conditions in the Basin of any portion thereof.

"H. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.

"I. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sales prices therefor.

"J. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.

"K. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548).

"L. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.

"M. At the request of the United States, or in the event that a Province shall be a party state, at the request of the Government of Canada, assist in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the Basin or any portion thereof.

"N. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact, provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

"ARTICLE VII

"Each party state agrees to consider the action the Commission recommends in respect to:

"A. Stabilization of lake levels.

"B. Measures for combating pollution, beach erosion, floods and shore inundation.

"C. Uniformity in navigation regulations within the constitutional powers of the states.

"D. Proposal navigation aids and improvements.

"E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wildlife and other water resources.

"F. Suitable hydroelectric power developments.

"G. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.

"H. Diversion of waters from and into the Basin.

"I. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

3. Gulf States Marine Fisheries Compact

P.L. 81–66

P.L. 81–66, Act of May 19, 1949, Ch. 128, 63 Stat. 70

JOINT RESOLUTION

Granting the consent and approval of Congress to an interstate compact relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Gulf Coast and creating the Gulf States Marine Fisheries Commission.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to any two or more of the States of Alabama, Florida, Louisiana, Mississippi, and Texas to enter into, the following compact and agreement relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Gulf Coast and creating the Gulf States Marine Fisheries Commission. The compact reads as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the Gulf Coast states have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent subject to Article 1, Section 10, of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned states and which are frequented by anadromous fish or marine species may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such state charged with the conservation of the fishery resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by such legislature or in the absence of such designation, such legislator shall be designated by the governor thereof, provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdiction to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fishery resources of the aforementioned states. To that end the commission shall draft and recommend to the governors and legislatures of the various signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard The commission shall from time to time present to the governor of each compacting state its recommendations relating to enactments to be presented to the legislature of that state in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when two or more states shall jointly stock waters the commission shall act as the coordinating agency, for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fisherman and the salt water anglers and such other interest of each state as the commissioners deem advisable may be established by the commissioners from each state for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in Article II of this compact shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article II, the participation of such state in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit or add to the powers or the proprietary interest of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two or more states party hereto may further amend this compact by acts of their respective legislatures subject to approval of Congress as provided in Article I Section 10 of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such states as shall so compact, and at their joint expense. The representatives of such states shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted but the creation of such section shall not be deemed to deprive the states so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

ARTICLE XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the states party hereto. Such initial appropriations as are set forth below shall be made available yearly until modified as hereinafter provided:

Florida	$3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	13,000.00

The proration and total cost per annum of thirteen thousand ($13,000.00) dollars, above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission and approved by the legislatures of the respective states. Each state party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting state until renounced by act of the legislature of such state, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the legislature. Notice of such renunciation shall be given to the other states party thereto by the secretary of state of the compacting state so renouncing upon passage of the act.

Approved May 19, 1949.

4. Pacific Marine Fisheries Compact

P.L. 80–232, P.L. 87–766, P.L. 91–315

P.L. 80–232, Act of July 24, 1947, Ch. 316, 61 Stat. 419

AN ACT

Granting the consent and approval of Congress to an interstate compact relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Pacific coast and creating the Pacific Marine Fisheries Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent and approval of Congress is hereby given to an interstate compact relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Pacific coast, creating the Pacific Marine Fisheries Commission, and now ratified by the States of California, Oregon, and Washington. The compact reads as follows:

"PACIFIC MARINE FISHERIES COMPACT

"The contracting states do hereby agree as follows:

"ARTICLE I

"The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevent of physical waste of such fisheries in all of those areas of the Pacific ocean over which the states of California, Oregon and Washington jointly or separately now have or may hereafter acquire jurisdiction.

"Nothing herein contained shall be construed so as to authorize the aforesaid states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

"ARTICLE II

"This agreement shall become operative immediately as to those states executive it whenever two or more of the states of California, Oregon and Washington have executed it in the form that is in accordance with the laws of the executing state and the congress has given its consent.

"ARTICLE III

"Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as the Pacific Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be invested with the powers and duties set forth herein.

"The term of each commissioner of the Pacific marine fisheries commission shall be four years. A commissioner shall hold office until his successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time, to a deputy, the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

"Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

"ARTICLE IV

"The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, in all of those areas of the Pacific ocean over which the states of California, Oregon and Washington jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

"To that end the commission shall draft and, after consulation[1] with the advisory committee hereinafter authorized, recommend to the governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell and anadromous fisheries in all of those areas of the Pacific ocean over which the states of California, Oregon and Washington jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

"The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

"The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell or anadromous fish or fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

"ARTICLE V

"The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employes as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

"ARTICLE VI

"No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

"ARTICLE VII

"The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of the Pacific marine fisheries commission.

"An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

"ARTICLE VIII

"Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

"ARTICLE IX

"Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the governor thereof.

[1] So in original. Probably should read "consultation."

"ARTICLE X

"The states agree to make available annual funds for the support of the commission in proportion to the primary market value of the products of their fisheries as recorded in the latest published reports (five year average), provided no state shall contribute less than two thousand dollars ($2,000) per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

"The compacting states agree to make available initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the latest five year catch records. Subsequent budgets shall be recommended by a majority of the commission and the total amount thereof allocated equitably among the states in accordance with the above formula.

"Schedule of Initial Annual State Contributions:

California	$11,000
Oregon	2,000
Washington	2,000
Total	15,000

"ARTICLE XI

"This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto."

SEC. 2. The Pacific Marine Fisheries Commission constituted by the compact shall make an annual report to Congress not later than sixty days after the beginning of each regular session thereof.

SEC. 3. The right to alter, amend, or repeal the provisions of sections 1, 2, and 3 is hereby expressly reserved.

Approved July 24, 1947.

P.L. 87–766, Act of October 9, 1962, 76 Stat. 763

AN ACT

To consent to the amendment of the Pacific Marine Fisheries Compact and to the participation of certain additional States in such compact in accordance with the terms of such amendment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to (1) the amendment of the Pacific Marine Fisheries Compact, initially approved by the Act of July 24, 1947 (61 Stat. 419), between the States of California, Oregon, and Washington, by the addition of a new article XII to such compact as set forth in section 2 of this Act, and (2) to the participation in such compact, in accordance with the terms of such article, of the States of Alaska and Hawaii and any other State having rivers or streams tributary to the Pacific Ocean.

SEC. 2. Article XII of the Pacific Marine Fisheries Compact, as agreed to by the States of California, Oregon, and Washington, reads as follows:

"ARTICLE XII

"The States of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of the Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.

"This article shall become effective upon its enactment by the States of California, Oregon, and Washington and upon ratification by Congress by virtue of the authority vested in it under Article 1, section 10, of the Constitution of the United States."

SEC. 3. The right to alter, amend, or repeal this Act is expressly reserved.

Approved October 9, 1962.

P.L. 91–315, Act of July 10, 1970, 84 Stat. 415

AN ACT

To consent to the amendment of the Pacific Marine Fisheries Compact.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress is hereby given to the amendments to articles I, II, IV, and X of the Pacific Marine Fisheries Compact as amended.

SEC. 2. Article I of the Pacific Marine Fisheries Compact, as amended, would read substantially as follows:

"ARTICLE I

"The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting States jointly or separately now have or may hereafter acquire jurisdiction.

"Nothing herein contained shall be construed so as to authorize the compacting States or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly."

SEC. 3. Article II of the Pacific Marine Fisheries Compact, as amended, would substantially read as follows:

"ARTICLE II

"This agreement shall become operative immediately as to those States executing it whenever two or more of the compacting States have executed it in the form that is in accordance with the laws of the executing States and the Congress has given its consent."

SEC. 4. Article IV of the Pacific Marine Fisheries Compact, as amended, would read substantially as follows:

"ARTICLE IV

"The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, in all of those areas of the Pacific Ocean over which the States signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against over-fishing, waste, depletion, or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

"To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the Governors and legislative branches of the various signatory States hereto legislation dealing with the conservation of the marine, shell and anadromous fisheries in all of those areas of the Pacific Ocean over which the signatory States jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any State signatory hereto, present to the Governor of such State its recommendations relating to enactments by the legislative branch of that State in furthering the intents and purposes of this compact.

"The commission shall consult with and advise the pertinent administrative agencies in the signatory States with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

"The commission shall have power to recommend to the States signatory hereto the stocking of the waters of such States with marine, shell, or anadromous fish and fish eggs or joint stocking by some or all of such States, and, when two or more of the said States shall jointly stock waters, the commission shall act as the coordinating agency for such stocking."

SEC. 5. Article X of the Pacific Marine Fisheries Compact, as amended, would read substantially as follows:

"ARTICLE X

"The States agree to make available annual funds for the support of the Commission on the following basis:

"Eighty percent (80%) of the annual budget shall be shared equally by those member States having as a boundary the Pacific Ocean; and five percent (5%) of the annual budget shall be contributed by any other member State; the balance of the annual budget shall be shared by those member States, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

"The annual contribution of each member State shall be figured to the nearest one hundred dollars.

"This amended article shall become effective upon its enactment by the States of Alaska, California, Idaho, Oregon, and Washington and upon ratification by Congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States."

SEC. 6. The right to alter, amend, or repeal this Act is expressly reserved.

Approved July 10, 1970.

5. Potomac River Compact of 1958

P.L. 87–783

P.L. 87–783, Act of Oct. 10, 1962, 76 Stat. 797

JOINT RESOLUTION

Granting consent of the Congress to a compact entered into between the State of Maryland and the Commonwealth of Virginia for the creation of the Potomac River Compact of 1958.

Whereas the State of Maryland and the Commonwealth of Virginia have entered into a compact, known as the Potomac River Compact of 1958, by means of concurrent legislation for that purpose, being chapter 269 of the Acts of the General Assembly of Maryland of 1959 and being found in chapters 5 and 28 of the 1959 Extraordinary Session of the General Assembly of Virginia: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress, subject to the provisions and conditions of section 2 of this joint resolution, is given to the State of Maryland and the Commonwealth of Virginia for the Potomac River Compact of 1958 and for each and every part and article thereof: *Provided*, That nothing in this compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in or over the region which forms the subject of the compact or the power of Congress pursuant to the United States Constitution over interstate or foreign commerce. The compact reads as follows:

"POTOMAC RIVER COMPACT OF 1958

"PREAMBLE

"Whereas Maryland and Virginia are both vitally interested in conserving and improving the valuable fishery resources of the Tidewater portion of the Potomac River, and

"Whereas, certain provisions of the Compact of 1785 between Maryland and Virginia having

become obsolete, Maryland and Virginia each recognizing that Maryland is the owner of the Potomac River bed and waters to the low water mark of the southern shore thereof, as laid out on the Mathews-Nelson survey of 1927, and that Virginia is the owner of the Potomac River bed and waters southerly from said low water mark as laid out, and that the citizens of Virginia have certain riparian rights along the southern shore of the river, as shown on said Mathews-Nelson survey, and, in common with the citizens of Maryland, the right of fishing in said river, Maryland and Virginia have agreed that the necessary conservation and improvement of the tidewater portion of the Potomac fishery resources can be best achieved by a Commission comprised of representatives of both Maryland and Virginia, charged with the establishment and maintenance of a program to conserve and improve these resources, and

"Whereas, at a meeting of the commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, to-wit: Carlyle Barton, M. William Adelson, Stephen R. Collins, Edward S. Delaplaine and William J. McWilliams, Esquires, on the part of the State of Maryland, and Mills E. Godwin, Jr., Howard H. Adams, Robert Y. Button, John Warren Cooke and Edward E. Lane, Esquires, on the part of the Commonwealth of Virginia, at Mount Vernon, Virginia, on the twentieth of December, in the year one thousand nine hundred and fifty-eight, the following Potomac River Compact of 1958 between the Commonwealth of Virginia and the State of Maryland was mutually agreed to by the said Commissioners: Now, therefore, be it

"*Resolved* by the Commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, meeting in joint session, that they do unanimously recommend to the said respective Governors that there be a new compact, to be designated as the "Potomac River Compact of 1958", and that the said new compact be referred as promptly as possible to the Legislatures of the State of Maryland and the Commonwealth of Virginia for appropriate action, and to the end and after ratification and adoption by said Legislatures the same be submitted to the Congress of the United States for approval.

"Article III

"Commission powers and duties

"Section 1. Oyster Bars.—The Commission shall make a survey of the oyster bars within its jurisdiction and may reseed and replant said oyster bars as may from time to time be necessary.

"Sec. 2. Fish and Seafood.—The Commission may by regulation prescribe the type, size and description of all species of finfish, crabs, oysters, clams and other shellfish which may be taken or caught, within its jurisdiction, the places where they may be taken or caught, and the manner of taking or catching.

"Sec. 3. Research.—The Commission shall maintain a program of research relating to the conservation and repletion of the fishery resources within its jurisdiction, and to that end may cooperate and contract with scientists and public and private scientific agencies engaged in similar work, and may purchase, construct, lease, borrow or otherwise acquire by any lawful method such property, structures, facilities, or equipment as it deems necessary.

"Sec. 4. Licenses.—(a) The Commission shall issue such licenses as it may prescribe which shall thereupon be required for the taking of finfish, crabs, oysters, clams or other shellfish from the waters within the jurisdiction of the Commission, and for boats, vessels and equipment used for such taking. Recognizing that the right of fishing in the territory over which the Commission shall have jurisdiction is and shall be common to and equally enjoyed by the citizens of Virginia and Maryland, the Commission shall make no distinction between the citizens of Virginia or Maryland in any rule, regulation or the granting of any licenses, privileges, or rights under this compact.

"(b) Licenses for the taking of oysters and clams and the commercial taking of finfish and crabs within the jurisdiction of the Commission shall be granted only to citizens of Maryland or Virginia who have resided in either or both states for at least twelve months immediately preceding the application for the license. Within six months after the effective date of this compact, the Commission shall adopt a schedule of licenses, the privileges granted thereby, and the fees therefor, which may be modified from time to time in the discretion of the Commission.

"(c) The licenses hereby authorized may be issued at such places, by such persons, and in accordance with such procedures as the Commission may determine.

"Sec. 5. Expenditures.—The Commission is authorized to expend funds for the purposes of general administration, repletion of the fish and shellfish in the Potomac River, and the conservation and research programs authorized under this compact, subject to the limitations provided in this compact.

"Sec. 6. Grants, Contributions, etc.—The Commission is authorized to receive and accept (or to refuse) from any and all public and private sources such grants, contributions, appropriations, donations, and gifts as may be given to it, which shall be paid into and become part of the General Fund of the Commission, except where the donor instructs that it shall be used for a specific project, study, purpose, or program, in which event it shall be placed in a special account, which shall be administered under the same procedure as that prescribed for the General Fund.

"Sec. 7. Cooperation of State Agencies.—The Commission may call upon the resources and assistance of the Virginia Fisheries Laboratory, the Maryland Department of Research and Education, and all other agencies, institutions, and departments of Maryland and Virginia which shall cooperate fully with the Commission upon such request.

"Sec. 8. Regulations.—The Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for the conduct of its meetings, such hearings as it may from time to time hold, and for the administration of its affairs.

"Sec. 9. Inspection Tax.—The Commission may impose an inspection tax, in an amount as fixed from time to time by the Commission, not exceed-

ing 25¢ per bushel, upon all oysters caught within the limits of the Potomac River. The tax shall be paid by the buyer at the place in Maryland or Virginia where the oysters are unloaded from vessels and are to be shipped no further in bulk in vessel, to an agent of the Commission, or to such officer or employee of the Virginia Fisheries Commission or of the Maryland Department of Tidewater Fisheries, as may be designated by the Commission, and by him paid over to the Commission.